



1 absence and your patience with my somewhat lengthy  
2 cross-examination, you may say somewhat clumsy  
3 cross-examination at times.

4 SIR ROBIN AULD: No.

5 MR FITZGERALD: Sir, I won't repeat here the remarks of the  
6 Premier in his opening statement to you, which you have.  
7 At the outset you didn't consider it appropriate for him  
8 to speak to it, but I hope that I can make these  
9 prefatory remarks before turning to the skeleton  
10 argument.

11 Suffice it to say, in our respectful submission,  
12 the Premier has co-operated with and endured a most  
13 searching Inquiry. During the Inquiry you, sir, have  
14 exercised to the full the exceptional, some might say  
15 draconian powers conferred on you by this exceptional  
16 law.

17 He has been denied some of the basic protections  
18 which would be conferred on the lowliest suspect in  
19 the criminal process because of the special nature of  
20 this Inquiry. Hearsay has been admitted. Secret  
21 evidence has been considered. His wife has been  
22 summonsed. He has been required to disclose extensively  
23 his bank statements, his credit card statements and even  
24 questioned on the intimate questions of how he funded  
25 his honeymoon in Israel.

1 Now, naturally, the Inquiry has focused on the  
2 negative. We understand, of course, that it is your  
3 task to be suspicious, to question and doubt and press  
4 for further disclosure and to call witnesses who may  
5 have anything to say against the Premier that could be  
6 relevant to this Inquiry.

7 But having focused on these negatives for so long,  
8 I ask you briefly not to forget the positives.

9 The Premier is the democratically elected Premier of  
10 this country, twice elected by the people of these  
11 islands. If he is flawed, if he is fallible, if he is  
12 shown to be extravagant, then so too are many  
13 politicians who get things done.

14 He has done a great deal for the good of these  
15 islands. He has attracted tourism and investment. He  
16 has sought to empower the people. He has sought to  
17 increase land ownership. He has done much to extend  
18 educational opportunity and to provide health care to  
19 all people of these islands.

20 So with those brief prefatory remarks, can I turn  
21 then to what we respectfully invite you to find as  
22 a minimum.

23 Firstly, we respectfully submit, and I am going to  
24 the closing submissions at A.1, that the most searching  
25 enquiries have taken place, but there is no reliable

1 "information" that any "corruption or other serious  
2 dishonesty" on his part "may have taken place".

3 Sir, in our submission, it is now clear that he  
4 neither received nor acted on any corrupt payments from  
5 developers, or indeed from fellow ministers. In short,  
6 he never entered into any corrupt bargains to grant  
7 favours in exchange for money or other benefits. Nor  
8 did he make any dishonest use of funds that were put at  
9 his disposal by political contributors or by the PNP or  
10 by the government. If there were originally some  
11 grounds for suspicion, we submit that the Premier has  
12 now dispelled that suspicion by his own evidence before  
13 the Commission and the supporting evidence of many  
14 witnesses.

15 The suggestion was made, there was some form of  
16 corrupt payment to various developers. He has denied  
17 it, the developers have denied it in detailed witness  
18 statements and we say now that the evidence has all been  
19 heard, there is no ground for continuing reasonable  
20 suspicion.

21 Secondly, we submit that there is certainly no basis  
22 for any positive finding of either corruption or other  
23 dishonesty. Indeed, there is probably no jurisdiction  
24 to go as far as making any such finding, given  
25 the Inquiry's limited terms of reference.

1 SIR ROBIN AULD: I would interrupt you there to say I think  
2 it is more than probable. I don't have jurisdiction to  
3 make any such findings.

4 MR FITZGERALD: I am obliged for that indication.

5 Thirdly, we submit that one further point arises.  
6 Of course it would only arise if you were minded to make  
7 a recommendation regarding the instigation of the  
8 criminal investigations by the police.

9 Now, then, a further issue would arise and we submit  
10 that this is relevant: there is absolutely no prospect  
11 that the Premier could receive a fair trial in the light  
12 of the adverse media publicity surrounding this case and  
13 the contamination of any potential jurors by rumour, by  
14 comment and by the public disclosure of inadmissible  
15 evidence.

16 That evidence includes an avalanche of hearsay. It  
17 includes his wife's evidence, which was obtained by  
18 dispensing with the rules of evidence that she could not  
19 be compelled, and all the evidence obtained from him  
20 personally by compulsory process.

21 Sir, we have referred you to Sir Louis Blom-Cooper's  
22 report. You will have seen there that he concluded in  
23 respect of the same jurisdiction and in respect of far  
24 more serious and grave criminal allegations that there  
25 was no prospect of there being a fair trial because it

1 was inevitably prejudiced by the effects of the Inquiry.

2 SIR ROBIN AULD: But how do you suggest that that should  
3 affect my task and to be true to my terms of reference?

4 MR FITZGERALD: Simply in this respect, sir: one of the  
5 recommendations that you were asked to consider is  
6 whether there should be an instigation of the criminal  
7 process. If, as we invite you to conclude, there would  
8 be no point in the instigation of the criminal process  
9 because it would inevitably end in the conclusion that  
10 he could not receive a fair trial, then in our  
11 respectful submission that is a factor that you, just as  
12 Sir Louis Blom-Cooper did, can take into account.

13 SIR ROBIN AULD: Isn't that an issue that has to be raised  
14 at the point of trial and determined by the trial judge?

15 MR FITZGERALD: It can be, sir, but our respectful  
16 submission would be that if the result is inevitable,  
17 you can make observations in that regard.

18 Perhaps I could come back to that at the end, sir.

19 I do respectfully submit that we have obviously provided  
20 you with what Sir Louis Blom-Cooper stated at the end of  
21 his Inquiry and you have it at the back of the  
22 authorities.

23 SIR ROBIN AULD: That is, of course, premised on trial by  
24 judge and jury, isn't it?

25 MR FITZGERALD: Yes.

1 It is. As I understand it, that is the right of

2 every citizen.

3 SIR ROBIN AULD: That is the law now.

4 MR FITZGERALD: Sir, perhaps I can return to the question of

5 any retrospective alteration. We would certainly not

6 think it would be either appropriate or lawful. Sir,

7 can I -- because it does come into the seventh of the

8 conclusions I am going to advance.

9 SIR ROBIN AULD: It is very important. That is why I want

10 to give you the opportunity just so I can be sure how it

11 should affect my approach to my job.

12 MR FITZGERALD: What we say, one of the recommendations you

13 are invited to make is whether the criminal process

14 should be instigated. That is one of the things within

15 the terms of reference, recommendations to that.

16 If it is entirely foreseeable, indeed inevitable

17 when you contemplate the instigation of that process,

18 that it could not possibly lead to a fair trial, then in

19 our respectful submission it would be an exercise in

20 futility to recommend the instigation of such a process

21 and indeed that seems to have been the approach taken by

22 Sir Louis Blom-Cooper.

23 SIR ROBIN AULD: It was, no doubt.

24 MR FITZGERALD: Sir, that is our respectful submission in

25 relation to that.

1       We say -- I think I had better return to that  
2 finally, sir. Sir, we of course admit, and the Premier  
3 admits, that he has been at fault in a number of ways.  
4 He admits that he didn't make full disclosure in  
5 the Register of Interests of his assets. He admits that  
6 he failed to disclose details of his other employment  
7 and of his financial sponsorships, as, for example, in  
8 his 2004 return, which you have at volume 5, tab 16.

9       But it is clear that in this he was no different  
10 from all other elected representatives, including  
11 members of the opposition. It is clear that a practice  
12 of neglect and carelessness over the registry of  
13 interests had existed for years and long pre-dated his  
14 own Premiership. Floyd Seymour has not been called but  
15 he too would have been obliged to admit to failure on  
16 his own part if he had given evidence.

17       Sir, I just recall what you said, Day 10, pages 187  
18 to 190, that he was to have been called before  
19 Christmas, but -- because at that time he had failed to  
20 make adequate disclosure of his interests. So clearly  
21 he had not made adequate disclosure in his original  
22 Register of Interests entry.

23       The Premier, secondly, admits that he has run up  
24 very large personal debts in the form of large loans  
25 from financial institutions and individuals. He admits



1 that he has failed to make repayments on many of them  
2 but financial mismanagement is one thing; corruption and  
3 dishonesty are another.

4 (10.45 am)

5 The large loans from financial institutions were all  
6 genuine loans taken up for bona fide purposes. It is  
7 dealt with in his statement at 3.33, in his evidence at  
8 Day 4, from pages 44 onwards.

9 They were all secured on valuable assets with  
10 the exception of the Arling Anstalt loan, and he is  
11 still in a position to repay those loans if necessary.

12 He gave evidence in relation to that on Day 4 at  
13 page 45, lines 15 to 16.

14 He admits that the government is heavily in debt,  
15 but this is very much as a result of an ambitious  
16 programme in tourism, education and health, and  
17 the inevitable effects of the global economic downturn.

18 He accepts, of course, that it would have been better  
19 not to have leased the Gulf Stream III jet. He said  
20 that in evidence, on Day 4, at page 23.

21 But it was used for government purposes and when it  
22 was not used for government purposes, he did pay for it  
23 himself, and in any event excessive expenditure, we say,  
24 does not involve either dishonesty or corruption.

25 We do say this: many of the allegations made against

1 him and the suggestions put to him fail completely to  
2 take account of local practices and local realities.

3 I will give these key examples. Firstly, he has he  
4 has been criticised for receiving large political  
5 donations but there is no law against the receipt of  
6 such political donations. I have given the quotation  
7 from the questioning of Chal Misick on this issue but  
8 other witnesses were to like effect.

9 It was a common practice, as you yourself  
10 recognised. He has been criticised for his liberality  
11 in giving money to the electorate. He has been  
12 particularly criticised for giving money and gifts at  
13 election time, but there is no law against political  
14 candidates and elected officers helping out the electors  
15 with money for special needs, weddings, funerals or  
16 telephone bills.

17 Lillian Boyce confirmed this as her understanding of  
18 the law, Day 13, pages 117 to 118.

19 So too did Floyd Hall, and the Premier dealt with it  
20 at Day 4, page 41, where he said that in fact people  
21 felt obliged to assist their constituency and people in  
22 their constituency to help them out, whether it be for  
23 phone bills, whether it be for weddings, funerals or  
24 health needs.

25 What is prohibited by the law, and it is prohibited

1 by section 68 and section 69 of the Election Ordinance  
2 which you have at tab 3 of your authorities, sir, is  
3 firstly bribery of the electorate, which involves a gift  
4 intended to induce such voter to refrain or from voting  
5 or to vote in a particular way.

6 And treating, which is an offence contrary to  
7 section 69, which is providing with expenses, food,  
8 drink or entertainment again for the purpose of  
9 corruptly influencing that person to vote or refrain  
10 from voting in an election.

11 We say that that is not made out. It involves  
12 a specific inducement to vote or abstain from voting  
13 that has not occurred and all that has occurred is  
14 the common accepted practice, whether that be a good  
15 practice or not a good practice, of representatives  
16 feeling obliged to give help to their constituents;  
17 a practice really common, in our respectful submission,  
18 throughout the Caribbean islands.

19 He has been criticised firmly for being friends with  
20 developers, such as Mario Hoffman and Dr Cem Kinay but  
21 he is the minister for development. This is a small  
22 jurisdiction. Good relations with important developers  
23 promote development and he cannot be criticised for  
24 promoting development.

25 What he cannot and did not in our submission do is

1 to show any special favours at the expense of other  
2 candidates. What he denies and denies strongly is that  
3 he ever sought or received bribes in exchange for  
4 favours to developers. He genuinely believed that the  
5 Salt Cay development was in the interests of the people  
6 of the islands. He genuinely believed that  
7 the Joe Grant's Cay development was too.

8 He deals with that in his first statement at 4.1 and  
9 he deals with it in his evidence at Day 4, page 74 in  
10 relation to Salt Cay and again at pages 75, line 23 to  
11 page 76, line 3.

12 All that he did, in connection with those  
13 developments, as minister of development, was to promote  
14 and facilitate development plans for reasons he believed  
15 to be beneficial to the community. Sir, we have set out  
16 the references and I will take you to it in part 4.

17 Sir, you are asked to inquire into possible crimes  
18 of corruption, and counsel to the Inquiry has focused on  
19 the suggestion that that there may have been some form  
20 of bribery by developers. In particular he has focused  
21 on Mr Hoffman in connection with Salt Cay and Dr Kinay  
22 in connection with Joe Grant's Cay.

23 In the end, in our respectful submission, it is all  
24 a matter of speculation, based on a series of completely  
25 unsound inferences. To take you first to the relevant

1 law, we say the law is clear. The offence of bribery at  
2 common law requires some specific corrupt bargain, and  
3 it is common law alone that governs the dealings of  
4 a minister.

5 What is required to constitute an offence is for  
6 the minister to accept a bribe as an inducement to show  
7 favour or forebear to show favour.

8 Sir, the case of Whitaker is in the authorities  
9 tab 2, and it sets out the test at common law.

10 I don't think I need to take you to it in detail.

11 SIR ROBIN AULD: It remains unsullied since 1914, does it?

12 MR FITZGERALD: Sir, common law actually remains because it  
13 has all been overtaken by statute in the UK, so one  
14 actually has to go back to statements by Cooke and by  
15 Hawkins in pleas of the Crown, and the statement of the  
16 report of the Commissioners on criminal law.

17 SIR ROBIN AULD: That is an exciting journey, that, and I  
18 look forward to it. Does it differ significantly from  
19 the present statutory provisions as to corruption, say,  
20 in the Crimes Ordinance here or in the English  
21 legislation?

22 MR FITZGERALD: We say, sir, that the basic test, indeed  
23 they were interpreting a statutory test as well as  
24 a common law test, is an inducement to show favour or  
25 forebear to show favour. We say that the Premier never

1 sought to enter into any corrupt bargain with either  
2 developer or indeed any developer; he never sought or  
3 accepted any benefit or any gift as an inducement to  
4 show favour.

5 Sir, because my learned friend has concentrated on  
6 these particular developments, Salt Cay and  
7 Joe Grant's Cay, can I just set out our position very  
8 briefly.

9 SIR ROBIN AULD: Yes.

10 MR FITZGERALD: Firstly, where is the evidence of a bribe?

11 In the case of Mr Hoffman, there is no question of  
12 the Premier receiving any benefit beyond a plane trip  
13 back in 2005. You remember Mr Lightbourne giving  
14 evidence of the plane trip. Now, of course, if any  
15 Premier received that in the UK, they would have to  
16 declare it, but you are perfectly able to travel on  
17 a plane and investigate a site.

18 The J&T Banka loan has not been shown to have been  
19 made by Mr Hoffman at all, and the directors of the bank  
20 have completely refuted the suggestion that that is  
21 the case.

22 Can I give you the reference, sir. It is their  
23 letter, volume 3, page 917, where they say in terms he  
24 is neither the director nor the shareholder of the  
25 J&T Banka, and that he had nothing to do with the grant

1 of that loan in May 2007.

2 It was made by the bank itself for legitimate  
3 purposes, as they have clearly stated in that letter.

4 Now, in the case of Dr Kinay, the contribution from  
5 Turks Limited in June 2007 was no different from  
6 the political contributions made to US politicians by  
7 particular interest groups on a daily basis. It was not  
8 linked to any favour or given as a reward for any  
9 favour.

10 SIR ROBIN AULD: Mr Fitzgerald, forgive me for stopping you.

11 You gave a reference in relation to the J&T Banka loan  
12 which I didn't catch up with you on.

13 MR FITZGERALD: Yes. Volume 3 --

14 SIR ROBIN AULD: Transcript volume 3?

15 MR FITZGERALD: No, it is volume 3 of the Premier's  
16 disclosure at page 917. Can I just tell you that there  
17 is one error.

18 It is stated that the contribution was made in June.

19 Of course it was made in January 2007. I do apologise.

20 Indeed, it was a classic contribution to an election  
21 made in the immediate run-up to the election in  
22 February 2007. It was made in January 2007.

23 SIR ROBIN AULD: Where are you?

24 MR FITZGERALD: Sir, if you go to the end of A.7, at the  
25 bottom of page 7, it should say "the contribution from

1 Turks Limited in January 2007", because that was in  
2 the immediate run-up to the election.

3 My learned friend has drawn attention to that and  
4 asked questions in relation to that and no doubt will  
5 eventually address you on that, but our respectful  
6 submission is there is nothing to suggest this is  
7 anything other than an electoral contribution, which is  
8 common practice, as is pointed out by Dr Kinay, in many,  
9 many parts of the world.

10 It is alleged that they won favours but both of them  
11 have submitted clear and detailed statements denying any  
12 improper deals or any special advantage of any sort.

13 Mr Hoffman points out that as a matter of fact, he  
14 was required as a condition of development to make  
15 a massive and exceptionally large financial commitment  
16 to the development of the infrastructure. Sir, we have  
17 given you the reference. It is his statement.

18 SIR ROBIN AULD: You call it a statement. Is that  
19 a statement or a letter to your instructing solicitors?

20 MR FITZGERALD: It is a signed letter, sir. I understand he  
21 has been in contact with the Commission.

22 SIR ROBIN AULD: That is the letter you read out to us and  
23 provided us copies of.

24 MR FITZGERALD: Absolutely, sir. He was required to spend  
25 up to 15 million on the development of



1 the infrastructure.

2 Sir, the other point is this: that much was made of  
3 the golf course rent but the Premier made the point  
4 which, as I understand it, was accepted on Day 4 at  
5 page 74, that that is what -- that is the basis on which  
6 all golf courses are rented out because their only value  
7 is in relation to the overall development.

8 There was nothing special about that at all.

9 Indeed, he gave examples of other golf courses that were  
10 leased out on exactly the same basis. So if one is  
11 looking for special treatment, you don't find evidence  
12 of it in our respectful submission. As to Dr Kinay, he  
13 points out in paragraph 17 of his statement of  
14 January 30th 2009 -- sir I have that at the back of  
15 volume 3. Again, the letter of Dr Kinay. The benefits  
16 to the government of the Turks & Caicos "exceed the norm  
17 for such an agreement" and include 15 per cent of the  
18 gross revenue of the sale of lots, in addition to the  
19 purchase price of the land, the rents received under  
20 the villa land lease, stamp duty benefits -- quite apart  
21 from the boost to the tourism economy.

22 There is a Cabinet minute which is at the back of  
23 core bundle 6 to confirm that those were the terms  
24 imposed on him.

25 Sir, of course there were negotiations. Of course

1 there were negotiations in which the developer seeks one  
2 position and the government insists on another. But  
3 those negotiations were concluded with significant  
4 benefit to the economy of the Turks & Caicos Islands.

5 Moreover, he undertook himself to build a high  
6 school in North Caicos for \$6 million and the valuation  
7 of the land, on which there has been so much emphasis by  
8 my learned friend in questioning of Minister Hanchell,  
9 was for a price fixed by a reputable firm, BCQS.

10 That is Day 19, pages 162 to 163. We ask you to  
11 accept the evidence of Minister Hanchell that that was  
12 a perfectly legitimate price, approved by surveyors who  
13 have an international reputation and knowledge of this  
14 area, and there was nothing special about it, despite  
15 all my learned friend's probing on that issue.

16 (11.00 am)

17 So I turn to the question of dishonesty. As yet, no  
18 specific offences of dishonesty have been particularised  
19 and put to the Premier. If and when -- of course if my  
20 learned friend does particularise them in his closing  
21 speech, then we would obviously seek to deal with them,  
22 but what we do deal with is some of the basic  
23 allegations and we deal with them below in parts 2 and  
24 part 3.

25 Sir, I must turn before going to the detailed

1 analysis to a further issue. That is this: the alleged  
2 climate of fear that you referred to in your opening  
3 statement, because of course that is based primarily on  
4 undisclosed allegations. The Premier has had a limited  
5 opportunity to test and contradict it but he did firmly  
6 deny the existence of such a climate of fear in his  
7 evidence. Can I just remind you, Day 3, page 177. What  
8 he said was:

9 "I am shocked and appalled by the suggestion that  
10 there is a climate of fear here."

11 Let's just examine, as far as we can from the way in  
12 which things happen here, whether that is a sound  
13 proposition.

14 Firstly, as the Premier himself pointed out, both  
15 the two main newspapers, the Weekly News and the Sun,  
16 are openly hostile to the Premier and critical of him  
17 without suffering any adverse response or retaliation.

18 SIR ROBIN AULD: Has that been true of the Sun until  
19 recently?

20 MR FITZGERALD: It has become hostile, sir, as a result  
21 of -- it is obviously run by Lillian Boyce's husband.

22 So we say if this is a climate of fear, if this is  
23 some tyrannical Papa Doc type island, why is it that  
24 the two newspapers are quite free to openly criticise  
25 the Premier without any adverse response or retaliation?

1       Secondly, sir, you yourself have observed the way in  
2       which the audience here have behaved. They don't look  
3       like people gripped by a climate of fear. Some members  
4       of the audience had no hesitation in laughing at the  
5       Premier, expressing disapproval when they sought fit.  
6       Thirdly, Georgia Dunn's evidence, the lady from Salt Cay  
7       and North Carolina. She said that the Premier was big  
8       and feels threatening, but she herself said he didn't  
9       say anything threatening at the airport meeting. I have  
10      given you the references there, sir. Her evidence in  
11      any event was exaggerated and unreliable in other  
12      respects. You can remember her saying Mr Hoffman had  
13      threatened her and then it being revealed that she had  
14      invited him to her wedding. So it didn't seem like  
15      the behaviour of someone who was intimidated. So her  
16      evidence hardly suggests the existence of a climate of  
17      fear.

18      Fourthly, Lisa-Raye McCoy's evidence was that the  
19      attitude of people to the Premier was respectful, and  
20      I quote, and she is hardly a friendly witness, "people  
21      would receive him with open arms and he was very  
22      generous".

23      That is Day 15, page 105, line 21. Again, that  
24      doesn't suggest a climate of fear. Now, turning to  
25      Lillian Boyce's hearsay evidence on the Premier's stated

1 intention to "take down" her husband and Floyd and her  
2 "if that's the last thing they do".

3 That was prefaced by the statement "there are lots  
4 of rumours about threats being made by the Premier".

5 So she started off with, well, there are lots of  
6 rumours; and it seems to be an assertion based on  
7 rumour. It is true that later, under cross-examination  
8 she claimed it came from reliable sources but she has  
9 not disclosed those sources to us and we know not  
10 whether she has even disclosed them to yourselves.

11 But certainly we would say her claim lacks  
12 credibility since she first stated it was based on  
13 rumour, and moreover she is obviously motivated by her  
14 opposition to the Premier and desire to remove him.

15 That is the height of the evidence disclosed to us and  
16 on which the Premier can fairly comment. All in all, we  
17 say there is no reliable basis to maintain a conclusion  
18 that there is a climate of fear induced by the Premier.

19 SIR ROBIN AULD: That, of course, is an important  
20 submission, and I have to look at all the evidence one  
21 way or another on it. But let's assume, just in order  
22 to enable you to deal with it, that there is widespread  
23 fear among many to give evidence openly to the Inquiry,  
24 how am I to deal with that in the way I approach my  
25 task?

1 MR FITZGERALD: Sir, one has come across this in Sayak(?)  
2 and in other contexts where the fundamental principle is  
3 that the basic approach is it is unfair to rely on  
4 something to the adverse to an interested party which  
5 they have not had an opportunity to comment on.

6 SIR ROBIN AULD: This is not that sort of party and it is  
7 not that sort of forum, is it, for all the reasons you  
8 have already mentioned this morning. How am I to deal  
9 with it?

10 MR FITZGERALD: I accept you have draconian powers. Indeed,  
11 that is one of the reasons why I say there cannot  
12 possibly be a fair trial at the end of this process.

13 SIR ROBIN AULD: Just deal with this Inquiry. It is not so  
14 much my draconian powers, they may be very wide, but  
15 this is an exercise into looking into possibilities with  
16 a view to some future proceedings, who knows what, if  
17 I so recommend.

18 But how am I to deal with climate of fear with which  
19 you say you can't deal because you have not heard half  
20 the evidence about it and in any event what you have  
21 heard doesn't demonstrate it. That is your case.

22 MR FITZGERALD: Can I make these two submissions. Firstly,  
23 you should be sceptical in the light of what the tip of  
24 the iceberg, those who have made allegations of this  
25 sort have not turned out to be reliable under

1 cross-examination or examination.

2 Secondly, it is extremely dangerous to rely on  
3 undisclosed allegations which have not been tested by  
4 the normal process and there is always the danger of  
5 people under the cloak of confidentiality exaggerating,  
6 acting from spite, acting from political enmity, without  
7 an opportunity for that to be exposed.

8 Thirdly, I accept that in the end of the day, you  
9 are entitled to reach your own conclusion, but I would  
10 invite you to pause very long before accepting  
11 unexamined, untested, secret communications which on  
12 a whole are anathema to the principles of common law.

13 Sir it would be fallacious to suggest that  
14 the Premier does not risk being the subject of adverse  
15 criticism and severe adverse consequences if criticised  
16 on the basis of these undisclosed allegations.

17 SIR ROBIN AULD: But he won't be criticised unless there  
18 are -- I am talking about criminal proceedings,  
19 resulting from them. And if such proceedings cannot  
20 proceed because they are not capable of a fair trial,  
21 where will it all end?

22 MR FITZGERALD: Sir, I am afraid I am not going to try to  
23 solve your problem. I am not being disrespectful. What  
24 I am saying is there is a choice here in a sense.

25 SIR ROBIN AULD: I am looking to you for help, of course.

1 MR FITZGERALD: Sir, I accept that. Can I just say this: if  
2 the given is, as in the Blom-Cooper report, there cannot  
3 be a trial, but this is it, as it were, this is  
4 the hearing, then I accept that that may give you  
5 broader powers. That is to say you may be able to  
6 express views, but it is only if that is the given.

7 But, sir, I do ask you for all the reasons -- they  
8 are not arid principles of law in our respectful  
9 submission, the principles of natural justice --

10 SIR ROBIN AULD: They are fundamental in a normal,  
11 confrontational, adversarial criminal trial.

12 MR FITZGERALD: Not just that, because experience has shown  
13 that people making allegations, particularly ones based  
14 on rumour, who don't stand up to questioning and who,  
15 when the thing is properly examined, simply don't cash  
16 out their initial allegation, it is dangerous to rely on  
17 that kind of evidence.

18 SIR ROBIN AULD: I go that far with you too. It goes to the  
19 weight of such evidence untested in any Tribunal. Is it  
20 a matter of weight for me to assess?

21 MR FITZGERALD: In a final analysis, sir, I think that must  
22 be right as a proposition of law. But I do invite you  
23 not to jettison the basic principle that if the Premier  
24 is susceptible to adverse consequences from any  
25 conclusion you reach on this, there is a basic



1 unfairness in him not having an opportunity to comment

2 on this.

3 Sir, I do invite you not to rely on anything that we

4 have not had an opportunity to comment on to reach

5 an adverse conclusion.

6 SIR ROBIN AULD: Would it be an adverse conclusion for me to

7 say: on the material before me I am satisfied that there

8 is a possibility of the existence of material which

9 would merit investigation with a view to prosecution.

10 Would that be adverse?

11 MR FITZGERALD: Yes. It would, sir. I accept --

12 SIR ROBIN AULD: Clearly it is not going to help him, but is

13 it adverse in the way in which you are putting

14 the proposition to me?

15 MR FITZGERALD: Yes, sir. For example, look at the case of

16 Reese v Kray(?), where the question was whether there

17 should be an investigation into the judge, and it was

18 said: this is just a preliminary finding that there is

19 something worth referring, and the Privy Council said

20 no, if you are dealing with a judge, even the suggestion

21 that there is something worth enquiring into has a great

22 impact.

23 All the more so when you are dealing with a Premier.

24 This would have a negative effect on the Premier --

25 SIR ROBIN AULD: Can you give me a reference to that case at

1 some stage?

2 MR FITZGERALD: Yes, I think it is in the 1990s, in  
3 the appeal cases. It is Reese v Kray.

4 Sir, I am not trying to (inaudible) but obviously  
5 I am conscious that I have quite a lot of ground to  
6 cover.

7 SIR ROBIN AULD: I am sorry to interrupt. There are times  
8 when I need your help and I am afraid I shall ask for  
9 it.

10 MR FITZGERALD: Sir, I am very grateful. It is very  
11 helpful, obviously, to have your preliminary concerns  
12 and views because we need to deal with them.

13 Just to go on. We deal with the Register of  
14 Interests at part B shortly. We make the point under  
15 the heading, "Legal Preliminaries", that this is  
16 essentially a system policed by the Registrar and by  
17 Parliament itself under sections 6 and 7 of the  
18 ordinance. It is initially for the Registrar to take  
19 action and if he refers a complaint to the House of  
20 Assembly, it is then for them to decide whether there  
21 should be a final suspension.

22 Sir, it just does give rise to quite an important  
23 point of principle, that if Parliament is left to police  
24 itself in relation to that, then true to the separation  
25 of powers, failures in that regard cannot of themselves

1 be susceptible to ordinary criminal sanctions, and  
2 indeed it would be unconstitutional if they were.

3 Therefore, we respectfully submit that whilst  
4 non-compliance may be evidence, background evidence of  
5 other matters, of itself as a free-standing  
6 justification for adverse findings, it is not something  
7 that this enquiry should trespass into and it is not  
8 covered by the concepts of corruption or serious  
9 dishonesty in any event.

10 So that is our basic submission of principle and it  
11 is in our respectful submission an incredibly important  
12 principle that where something is given to Parliament to  
13 police, then true to the separation of powers, it is not  
14 for any other authority, executive or judicial, to take  
15 it upon itself to do the policing which is entrusted by  
16 the law to Parliament.

17 Sir, with that caveat, can I turn to our submissions  
18 on the merits, and we respectfully invite you at B.3 to  
19 have regard to the following facts as mitigating any  
20 failure to the Premier's part.

21 Firstly, there clearly was a universal, a historic  
22 and a cross-party practice of non-compliance with the  
23 requirements of the ordinance. In a word, nobody fully  
24 complied with a full duty of disclosure. Sir, you dealt  
25 with this at Day 10, page 190, lines 10 to 13 and you

1 said this:

2 "We might call it a cross-party culture, but we  
3 might not have much difficulty in saying that things  
4 were pretty sloppy here all round."

5 You really indicated that no one was doing a good  
6 job on the returns to the Register of Interests. There  
7 is anyway clear evidence in the pages of the register  
8 over the years that nobody at all declared anything  
9 under the heading "Gifts and Sponsorships". I think  
10 there was one exception over the years.

11 This supports the Premier's evidence to that effect.  
12 It is Day 1, pages 48 to 49 and page 51. His evidence  
13 in turn was corroborated by Mr Floyd Hall's evidence,  
14 Day 15, pages 147 to 148. Gifts and sponsorship is  
15 intended to cover "any material benefits received as  
16 a candidate or Member of the House of Assembly", but no  
17 specific mention is there made of political donations.  
18 I suppose it could clearly come within those terms.

19 (11.15 am)

20 As you yourself observed, the records were kept in a  
21 chaotic state on the living room floor of the Registrar  
22 in Grand Turk. I have given you the reference. This  
23 obviously is an area where there was laxity but it was  
24 universal, historic and cross-party and to single out  
25 the Premier or indeed other ministers for adverse

1 findings in this regard against that background, we  
2 respectfully submit would be unjust, particularly given  
3 that it may even be unconstitutional, given that this is  
4 a matter entrusted to Parliament to police.

5 I turn --

6 SIR ROBIN AULD: What would be unconstitutional about  
7 whatever I might do with it, sitting here, again with my  
8 terms of reference in mind?

9 MR FITZGERALD: I suppose really if Parliament are told this  
10 is for you to investigate and address, then it is really  
11 like a privileged area. It is like the courts deciding  
12 whether somebody can have a particular privilege in  
13 Parliament. He is answerable to Parliament, and so is  
14 every other representative, for any failures in the  
15 Register of Interests.

16 It may be evidence but it is not the basis in our  
17 respectful submission for a free-standing adverse  
18 finding.

19 Can I now turn to the detailed allegations. I will  
20 try to deal with them swiftly and in order, starting at  
21 page 14.

22 Firstly, the government accounting for budget.  
23 Counsel to the Inquiry specifically sought to criticise  
24 the Premier on the scale of his salary and the level of  
25 his housing allowance.

1 Now, the Premier answered all the criticisms fully  
2 in his evidence on Day 1 at pages 30 onwards. He  
3 pointed out the basic salary is 150,000, which is  
4 the same as the Governor's. In addition, he has monthly  
5 allowances of 11,500 to cover accommodation and again  
6 that compares favourably with the Governor's position  
7 who enjoys free of rent a mansion in Grand Turk with  
8 a golf course and a beachfront condominium in  
9 Providenciales.

10 A substantial salary and allowance for a head of  
11 government involves neither dishonesty or corruption.  
12 Moreover, the salary is published, as he gave evidence  
13 at page 33, and the Premier is democratically  
14 accountable for the level of his salary. We  
15 respectfully submit that criticisms of this nature are  
16 not properly within the terms of reference of the  
17 Inquiry.

18 Second point, ministerial use of public funds, in  
19 particular tourism. We have set out the allegation that  
20 we were notified of, particularly in relation to the  
21 tourism budget, government jet, and use of government  
22 and PNP funds for personal purposes.

23 Those allegations we take in turn. As to treating  
24 the tourism budget as a personal travel fund, we say  
25 that is totally unfair. He was the minister of tourism.

1 He travelled widely to promote the islands with  
2 roadshows, meetings with ambassadors and meetings with  
3 promoters.

4 As the Deputy Premier himself recognised,  
5 the Premier through his travels has been able to attract  
6 considerable investment to the Turks & Caicos and  
7 attracts quite a lot of investors as a result of his  
8 travels.

9 That is even from his now political rival  
10 a recognition that his travels have borne fruit and  
11 benefit to these islands.

12 We also draw attention to the dramatic increase in  
13 the tourism budget that was put to the Premier. As he  
14 states, it was just by the holding of carnivals and  
15 special festivals which have served to promote  
16 the Turks & Caicos as a tourist destination and put it  
17 on the map.

18 Overall the years certainly from 2003 the increased  
19 budget to promote tourism has been matched by a massive  
20 increase in tourist arrivals.

21 Sir, I have not forgotten the evidence which was  
22 given yesterday in relation to the last year and  
23 the advertising campaign. I would prefer, since it came  
24 without notice, and I am not criticising, to put  
25 something in writing and get the Premier --

1 SIR ROBIN AULD: Do. On the topic, the efficiency of  
2 management of budgets, he may have been good or bad.  
3 Similarly, the financial management by the tourist board  
4 of its affairs may have been good or bad, may have  
5 produced a good outcome or not.

6 How that would sound in any finding from me under  
7 term 1 of my terms of reference, I can't at the moment  
8 see, but it may be highly relevant to any  
9 recommendations that I might want to make under term of  
10 reference 2.

11 MR FITZGERALD: Yes. Sir, we would not invite you to make  
12 any adverse findings under heading 1. If you are minded  
13 to say that, as it were, there should be stricter  
14 controls, as I think some of the witnesses were  
15 accepting, then we certainly wouldn't dissent from that  
16 proposition, in terms of recommendations.

17 Can I just make, though, these points as to the  
18 advertising campaign. I will try and put something more  
19 detailed in writing. Firstly, we respectfully submit  
20 that it was justified, and you will have noted that in  
21 the minutes, one of the members of the tourist board  
22 pointed out that it attracted occupancy of hotel rooms  
23 and future occupancy of hotel rooms to be built and that  
24 he saw it as something positive. That was a member of  
25 the tourist board.



1       Secondly, the expenditure was approved by  
2 the tourist board and by the ministry of finance and by  
3 Parliament.

4       Thirdly, as to the fee paid by Kerwin Media to  
5 Lisa-Raye, we have the evidence of Mr Kerwin himself,  
6 that was a normal fee and that it was negotiated with  
7 Lisa-Raye. I am not going to get into the debate about  
8 that but we just make these two points. Lisa-Raye McCoy  
9 herself said -- can I just give you the quotation,  
10 Day 14, page 180 to 181 -- that she had been told it was  
11 a modest fee for an eight to ten-day photoshoot with her  
12 becoming the face of the islands.

13       Can I remind you also of something which I forgot to  
14 put to Mr Garland yesterday. But Mr Garland, in the Jet  
15 interview, the magazine Jet, in which he was  
16 interviewed, which I quoted on Day 14 at pages 152 to  
17 153, said that the campaign fronted by Lisa-Raye had had  
18 a dramatic impact on tourism.

19       So that is Wayne Garland himself being quoted in  
20 a magazine saying it has upped tourism and increased  
21 the profile and been positive.

22 SIR ROBIN AULD: But what difference does it make to any  
23 potential criticism of the Premier whether it worked or  
24 it didn't? It could have been a terrible failure.  
25 Would that have had the makings for me of an adverse

1 finding against the Premier?

2 MR FITZGERALD: My learned friend was trying to suggest that

3 it was a terrible failure. My learned friend Mr Milne.

4 SIR ROBIN AULD: It may or may not be so, but how does it

5 help me on my term of reference 1?

6 MR FITZGERALD: Sir, in a word we say it was perfectly

7 proper for Kerwin Media to hire Lisa-Raye McCoy. She

8 was a model. She had a profile. She had been

9 a moderately successful sitcom actress and to pay her

10 a fee. It has been indicated by both her and Kerwin

11 that that was a modest fee in the circumstances.

12 SIR ROBIN AULD: That is a point you could make whatever

13 the outcome of her involvement, isn't it, good or bad?

14 MR FITZGERALD: Yes. So we say if the allegation is money

15 being wantonly wasted or dishonestly wasted for no good

16 purpose, we say no wanton waste, no dishonest waste. Of

17 course people can make wrong choices in economic

18 priorities, but that is quite different from corruption

19 or dishonesty.

20 Sir, I don't know whether I need to deal with the

21 jets in the light of what you say. Again, we say if it

22 is all about excessive expenditure, that is neither

23 dishonest nor corrupt, and we make that point at

24 pages 16 to 17.

25 SIR ROBIN AULD: Not so much about excessive expenditure but

1 whether the expenditure was properly incurred in  
2 exercising his public duties.

3 MR FITZGERALD: Sir, I seek to address that at 2.5, page 17.

4 As to jet 165G, it was leased by the government from  
5 Indigo Transportation. The "offer to purchase" the 1983  
6 Gulf Stream III was merely exploratory. It should be  
7 volume 3, not volume 2 there, pages 1045-7, the  
8 reference.

9 The evidence clearly supports the Premier's claim  
10 that it was in fact leased and not purchased.  
11 The leasing of the jet was open and approved by Cabinet  
12 on the proposal of Mr Floyd Hall. That is confirmed by  
13 the minutes of July 2006 in bundle 6 and by Mr Hall's  
14 evidence at Day 15, pages 161 to 163.

15 The suggestion that it was owned by the Premier is  
16 inconsistent with Lisa-Raye McCoy's own evidence that  
17 her plans to refurbish the jet required approval of  
18 Jeff Watson of Indigo Transportation.

19 You have that reference to her statement at  
20 paragraph 8 and her evidence at Day 14, pages 161 to  
21 162.

22 As to whether the cost was excessive, this is more  
23 a question, we submit, for Parliament than for this  
24 Inquiry, but we make three points: firstly, the Premier  
25 leased it for governmental purposes and used it for

1 governmental purposes. In fact the Portuguese trip was  
2 on the other jet. If you can put the reference in there  
3 Day 4, page 24, at (i).

4 Secondly, when he used it for personal purposes, he  
5 paid for the use personally and we have given you  
6 the reference there.

7 Thirdly, the use of the plane has to be seen in the  
8 context of the highly successful and flamboyant era in  
9 which it occurred, before the current global slump.

10 Fourthly, he stopped using the plane in June 2008.

11 Turning to the other jet, the occasional chartering  
12 of jet 425SV, it was seldom used by the Premier as he  
13 said in his evidence and in his statement and we have  
14 given you the reference for this.

15 It is true that it was used for a trip to Portugal  
16 on 18th April 2007, that it was chartered for that, but  
17 that was for official purposes as explained by  
18 the Premier in his evidence at Day 4, page 28. He was  
19 attending the World Tourism Conference in Portugal. He  
20 deals with it further at pages 26 to 28 of Day 4.

21 Now, sir, we accept criticism and the Premier did.  
22 He said with benefit of hindsight, it would have been  
23 better not to have used it. He abandoned the use of the  
24 jets in the summer of 2008 and the contract has been  
25 rescinded. That was put to Floyd Hall, not denied by

1 him. He just said: I was under the impression the  
2 contract was ongoing. The further allegations made by  
3 the opposing clique within the PNP in their press  
4 release that he continues to charter jets are, we  
5 respectfully submit, based on rumour and misconceived.

6 Sir, I am not going to go into the details. We have  
7 given you the references to Lillian Boyce but the fact  
8 is, if one looks at her evidence at pages 70 to 76, at  
9 the Day 17 transcript, she first of all said she was  
10 sure it was in January; then she said no, it was the end  
11 of December and then it turned out that in fact the trip  
12 was in early December.

13 Basically she, when asked did you check it, she  
14 said: I didn't personally check it but it was based on  
15 reliable sources; although originally she had said it  
16 was based on rumour.

17 We respectfully submit that that evidence is not  
18 worthy of being the basis of any finding whatsoever.  
19 The alleged abuse of the government Horizon card, that  
20 simply turned out to be completely misconceived. It was  
21 not an official card. It was, as he stated, a personal  
22 card and he dealt with that at some length in Day 4,  
23 page 29, and also he dealt with it at Day 3 -- he dealt  
24 with it at Day 4, page 29. It was used to pay for his  
25 honeymoon in Israel, it was his own business, since it

1 was his own personal card. Day 4, page 30.

2 We say, despite exhaustive questioning and much  
3 misplaced mockery by my learned friend Mr Milne about  
4 what are you doing using an official card to have  
5 a honeymoon in Israel, in fact the evidence is clear  
6 that it was his personal card.

7 The Youlanda Scott allegation, we deal with at 2.10,  
8 the payment of a bill for a stylist to the Premier by  
9 the PNP.

10 The Premier's response is he cannot remember how  
11 this bill came to be paid in this way but, sir, as you  
12 know, he has put forward two explanations in his first  
13 statement at 2.9 and indeed in his oral evidence. There  
14 may have been a contribution to the PNP on the  
15 understanding it was to be a wedding gift, or the PNP  
16 may have been underwriting a cost incurred by him,  
17 justified by him having already met costs on their  
18 behalf, as for example he used his own money to purchase  
19 the Victory Store purchase, the electioneering  
20 paraphernalia for the PNP. His evidence was clear, that  
21 he used his own money to pay for PNP expenses and may  
22 well have been reimbursed by the PNP in that way.

23 (11.30 am)

24 The awarding of scholarships, we analyse at 2.11.

25 It turns out in our submission to be without substance

1 insofar as it was put forward as suggesting criminal  
2 dishonesty or corruption. On this subject both he and  
3 the Deputy Premier Floyd Hall and Lillian Boyce, and we  
4 have given you the references, all gave unchallenged  
5 testimony as to the legality and necessity of ministers  
6 authorising scholarships and the lack of any statutory  
7 requirement for approval by the scholarships committee.

8 Sir, the Premier specifically refuted the suggestion  
9 that he acted out of a desire to favour supporters or  
10 connections, Day 4, pages 34 to 35. As he pointed out  
11 those awarded scholarships came from all walks of life  
12 and from all political persuasions.

13 So we submit that this allegation may well point to  
14 the need for a stricter regime, but it doesn't point to  
15 any dishonesty or any corruption on the Premier's part.

16 Sir, I turn to the sources of income at part 3. We  
17 say he has made the most extensive disclosure as  
18 detailed in his first statement in paragraph 3.1 and his  
19 second statement at parts 2 and parts 5. He has  
20 explained the shortcomings in his initial disclosure.

21 You will remember, sir, the debate about the  
22 September 2008 disclosure. When asked about that he did  
23 point out that at that time he was dealing with the  
24 hurricanes and their aftermath and with the divorce from  
25 his wife. Can I give you the reference; that is Day 3,

1 page 185 and Day 4, page 39.

2 I am not going to repeat the details of his sources  
3 of income. They are fully set out in part 3 of his  
4 statement in the detailed appendices and in particular  
5 appendix 5. I would ask you to bear in mind that that  
6 appendix 5 which you have at the back of his statement,  
7 this was something he volunteered and carried out  
8 the exercise with his legal advisers of identifying  
9 the particulars of cheques and the information that  
10 could be gleaned from cheque stubs and particulars and  
11 provided the Commission with all that.

12 So it must be to his credit that he identified  
13 the very information which was then turned against him  
14 by my learned friend Mr Milne and used as a basis for  
15 saying that these are suspect payments. He provided  
16 those materials.

17 Can I just concentrate on three things. Firstly  
18 the loans made to him by financial institutions, then  
19 the loans made to him by individuals and finally  
20 political donations.

21 Sir, just pausing for a moment. There has been  
22 a leitmotif in the cross-examination of: is there  
23 a hidden bank account.

24 My learned friend emphasised the suggestion that  
25 the J&T Banka account might be some suspect hidden bank



1 account. In fact, we respectfully submit it is clear  
2 that that account simply serviced the loan; he deals  
3 with it in his second witness statement, part 6,  
4 paragraphs 6.1 to 6.4.

5 Indeed, the J&T Banka directors have written  
6 a letter saying that that is simply the internal account  
7 that services the loan.

8 As to the other account which had originally aroused  
9 suspicion, it turned out to be Minister Hanchell's  
10 account.

11 So we respectfully submit that phantom of the hidden  
12 account should be banished to the realms of speculation.

13 The loans made to the Premier by financial  
14 institutions, it is true that he has raised loans. It  
15 is true that they are substantial and we have set them  
16 out. We make three points.

17 Firstly, they were all for bona fide purposes, as he  
18 set out, Day 4, page 44, lines 20 and page 45, and in  
19 his statement and I have given you the reference.

20 Secondly, they were all, with the exception of the  
21 Arling Anstalt loan, secured on adequate collateral and  
22 I have given you again the reference to his evidence.

23 Thirdly, his assets are greater than his liabilities  
24 and he is in a position to repay the loans. In  
25 cross-examination from Mr Milne -- I have given you

1 the reference -- he accepted, Mr Milne, that "your  
2 assets may exceed your liabilities, but not by massive  
3 amounts".

4 In the light of those facts, we say there is no  
5 basis for the suggestion that these are some form of  
6 phoney loans, payments in disguise as loans, as has been  
7 suggested by counsel to the Commission.

8 None of the institutions have provided any evidence  
9 to support this. J&T Banka has put in a statement that  
10 fully refutes the suggestion, and I understand you have  
11 information from Mr Wehrli, when contacted, that he had  
12 a genuine loan in the form of a Secured Holdings loan.

13 Taking in particular the J&T Banka loan, we make  
14 three points.

15 Firstly, the loan was taken out for the purposes of  
16 purchasing a house in Los Angeles and that was to fulfil  
17 a specific promise in the pre-nuptial agreement. You  
18 will probably recall that bit of evidence from Lisa-Raye  
19 accepting that he had, as it were, undertaken at her  
20 lawyer's request to provide a home in Los Angeles at the  
21 cost of 6 million.

22 Secondly, the loan was secured on a valuable asset,  
23 Chal Misick's shares in Salt Cay Golf Club Limited.

24 Thirdly, the loan has been expressly renegotiated to  
25 secure a postponement of the repayment loan.

1       So we draw attention to that. If it was some phoney  
2       loan, why would they have gone through the exercise of  
3       postponing the repayment and recording that fact in  
4       a contract.

5       In addition, he relies on the evidence of  
6       the directors of the J&T Banka; I have given you  
7       the reference; them saying this was a genuine loan for  
8       the purchase of the property.

9       SIR ROBIN AULD: You say evidence; this was a letter from  
10      them?

11      MR FITZGERALD: Yes. In the wider sense of the word,  
12      I believe, material and he invites you,  
13      the Commissioner, to treat with scepticism Lisa-Raye  
14      McCoy's claim that she never read the document before  
15      signing it. So we just make the short point, it hardly  
16      fits her profile. She describes herself in interviews  
17      on her website as a businesswoman, a go-getter and  
18      a hustler. Then she says she doesn't read a document  
19      which commits her to a \$6 million loan. We say that is  
20      not credible.

21      As to the loans made by the individuals, we deal  
22      with those shortly at 3.9. He submits that it  
23      is misunderstanding the custom and practice of this  
24      jurisdiction to assume that loans from family members or  
25      friends must have some sinister connotation.

1 It happens, as was said by Mr Hanchell and by  
2 Chal Misick, and you will also probably recall that  
3 the offices of Chal Misick -- this is Day 11, page 98  
4 were in fact rented -- sorry, were not rented. They  
5 were made available, free of rent by the Premier. So  
6 one brother helps out another brother in one way, and  
7 the vice versa.

8 SIR ROBIN AULD: I wonder if we might stop there to have  
9 a break. I know I am stopping you in mid-section but  
10 there is still a little way to go and I expect you could  
11 do with a break too.

12 MR FITZGERALD: I probably could.

13 SIR ROBIN AULD: Five to ten minutes.

14 (11.40 am)

15 (A short break)

16 (11.46 am)

17 MR FITZGERALD: Sir, I think I had reached the question of  
18 the loans from Cabinet members in May and June of 2006.

19 My learned friend placed great emphasis in his  
20 examination on those loans and the suggestion made was  
21 that these were kickbacks for profits made by those  
22 ministers from the sale of Crown land at  
23 Northwest Point.

24 That allegation was put in terms to Lillian Boyce at  
25 Day 13, pages 136, lines 15 to 16.

1       The loans in question were those made by Floyd Hall  
2       via Stanfield Greene on 26th May; by Jeffrey Hall via  
3       Alliance Realty Limited; and by Lillian Boyce herself.

4       The Premier himself of course was the first to  
5       disclose the fact of those payments in the -- when he  
6       disclosed the relevant bank particulars recording their  
7       origin in his appendix 5. His clear evidence was that  
8       they were personal loans after his wedding because of  
9       the costs of the wedding. I have given you  
10      the reference, Day 2, pages 95 to 97.

11      It is true that Lillian Boyce and Floyd Hall claim  
12      that the loans were from their brothers and not from  
13      them personally, but that really isn't perhaps so  
14      important. The crucial question is was there any  
15      question of a kickback.

16      There you have the Premier saying, no, these were  
17      straightforward loans, Lillian Boyce emphatic that this  
18      was not a kickback but a loan, Day 13, pages 136 to 137.  
19      Floyd Hall emphatic to the same effect, Day 15 pages 148  
20      to 151 and Jeffrey Hall likewise.

21      When you have that unanimity even between warring  
22      ministers, we respectfully submit that it is important.  
23      We respectfully submit that all of them have denied, and  
24      the Premier has given a perfectly comprehensible  
25      explanation of why he received that loan and why he

1 received it at that time, just after his wedding, which  
2 as my learned friend demonstrated by holding up  
3 the glossy brochure, was an expensive enterprise.

4 SIR ROBIN AULD: Is that an adequate way of dealing with  
5 this particular transaction? All these loans seemingly  
6 were derived from one particular land transaction via  
7 the four donors whom you have identified, two of whom to  
8 which you have just referred. If they were themselves  
9 in some way involved improperly in this, they had good  
10 reasons to take the same stand as the Premier.

11 What do you say about the coincidence of the source  
12 of the monies from one transaction and the flow it then  
13 took towards the Premier all at about the same time?

14 MR FITZGERALD: What we respectfully submit is it is clear  
15 there was common knowledge that the money was available.  
16 That is to say Mr Jeffrey Hall said yes, the Premier did  
17 know that the money had been made available and that was  
18 why he was asking for a loan.

19 So what we respectfully say in response to that  
20 question is firstly, the other temporal coincidence is  
21 it was just after his wedding. Secondly, it is admitted  
22 that it was common knowledge that they had come into  
23 this money and the Premier was saying: you have got some  
24 money, please make me a loan.

25 So I don't think I can develop it beyond that, but

1 we do say that those two points, one blunts the question  
2 of the coincidence of time, the second blunts  
3 the inference that one can say, well, because the money  
4 came from the proceeds of the sale, therefore it must  
5 have been some form of kickback in respect of  
6 the transactions that yielded that money.

7 We say not so. Close colleagues, friends at the  
8 time, at the time of the wedding, making a loan to the  
9 Premier.

10 Sir, obviously in the light of anything my learned  
11 friend Mr Milne says about that, it may be that we will  
12 need to put something more detailed in in writing.

13 But that is our respectful response; that  
14 the inference simply would not be one that the facts  
15 bear and that their unanimous evidence should not be  
16 lightly rejected.

17 Sir, can I turn to the question of political  
18 donations. The Premier has also disclosed a number of  
19 political donations made to him personally for  
20 the purpose of political campaigning.

21 Sir, he dealt with this issue quite frankly in his  
22 first statement in paragraphs 3.8 and 3.18. He said  
23 there, in relation to the Caicos Construction Management  
24 and Luxus Aviation, yes, I do have political  
25 contributions. He didn't say those were the only ones;

1 they are made sometimes to the party, sometimes to me  
2 personally for the purposes of electioneering,  
3 campaigning and meeting the needs of constituents.

4 Then, sir, he dealt with that evidence in Day 4 at  
5 pages 40 to 41. Sir, I am conscious of the time  
6 pressure. If you don't mind, I may have to go over  
7 slightly, but Day 4, pages 40 to 41, he dealt with this  
8 point.

9 "Mr Fitzgerald: ... What about assisting  
10 constituents, would that be covered?"

11 At the bottom of page 40.

12 "Answer: Yes, that's an important cultural  
13 phenomenon here in the Caribbean.

14 "Sir Robin Auld: What is?"

15 "Answer: Assisting constituents.

16 "Sir Robin Auld: Do you mean all constituents of  
17 every political hue or just those of your own party?"

18 "Answer: All constituents."

19 Then you asked, sir:

20 "An important cultural phenomenon here to do what,  
21 to financially assist?"

22 "Answer: To financially assist or assist generally,  
23 but financially assist, whether it is wedding, funerals,  
24 trip to Miami.

25 "Mr Fitzgerald: Just looking at that, could



1 a constituent go to their representative and ask for  
2 help, for financial help?

3 "Answer: Yes.

4 "Question: In those circumstances, would  
5 the representative feel free to give help?

6 "Answer: Obligated."

7 So that is the destination of the political  
8 donations as well as of course the meetings,  
9 the occasions, the carnival-type get-togethers that take  
10 place for the purposes of electioneering.

11 We respectfully submit that the donations from  
12 politicians -- to politicians in those circumstances are  
13 part of a cultural phenomenon. It may be said, there is  
14 an interesting article, I think, in the Free Press about  
15 this. It may be said it is time that this cultural  
16 tradition throughout the Caribbean stopped.

17 But it is not in our respectful submission unlawful  
18 or criminal and one sees what Dr Cem Kinay has said:  
19 this is the sort of thing that happens throughout  
20 the world in many jurisdictions with which he has  
21 dealings.

22 So you just have to look at the biography of  
23 Lyndon Johnson by Robert Caro and one sees that through  
24 his period as Master of the Senate, he was being given  
25 large donations, common knowledge, by powerful interest

1 groups, and that this was part of the political culture.  
2 I referred perhaps somewhat elliptically to that  
3 practice but, sir, it is a big step, we say, to turn  
4 something which is a cultural phenomenon into a crime.

5 We respectfully submit that there is not one "all  
6 things fit all jurisdictions" model of the acceptability  
7 of political donations.

8 That is not to say that political donations are not  
9 made in the UK too. But obviously the rules are  
10 stricter.

11 So we respectfully submit there was nothing unlawful  
12 or improper about these political donations and they  
13 cannot in any way be construed as bribes.

14 The question of PNP finance. Sir, that really  
15 surfaced through the course of the hearing and as  
16 a result of further disclosure. We accept there and  
17 I understand the allegation to be well, the Premier and  
18 his fellow officers held the funds in trust for the PNP  
19 and that they were musing it in some way but we say that  
20 is -- that doesn't meet the realities.

21 It is true that there is some evidence of the PNP  
22 meeting his personal expenses as, for example, in  
23 the case of the Youlanda Scott transaction, but  
24 the Premier cannot be accused of any dishonesty. It is  
25 clear that he spent his own money on purchases for

1 the PNP, the Victory Store purchase, that is volume 3,  
2 page 1036 and in the overall scheme of things, he gave  
3 more than he received.

4 In short the commingling, the bad accounting  
5 practices, are different, we respectfully submit, from  
6 dishonesty. As to the stipends or so described by  
7 Mr Hall in his ledger, the Premier deals with this in  
8 his second statement and I have given you  
9 the references. Firstly, we submit he is entitled to  
10 a salary and even Mr Hall accepted that he may not have  
11 rigidly distinguished between salary and stipend in his  
12 ledger.

13 I have given you the references, I won't labour  
14 those, but he accepted that he may not have rigidly  
15 distinguished them.

16 Secondly, the Premier was also naturally entitled to  
17 higher payments and stipends for his travel,  
18 entertainment and assistance to constituents because of  
19 his special role as leader of the party and as Premier.

20 That was accepted by Floyd Hall himself, and I have  
21 given you the reference to his evidence, accepting that  
22 fact.

23 Now, I turn to the Belize Bank account. It is  
24 accepted that it was known about by the leadership but  
25 not the party as a whole. We submit there was no

1 obligation to disclose it and certainly no criminality  
2 in the non-disclosure. It was used for legitimate party  
3 purposes as stated by Mr Floyd Hall at Day 15, page 158  
4 and the Premier, together with Floyd Hall and  
5 Jeffrey Hall, personally guaranteed the overdrafts.

6 So it is hardly a case -- so the guarantee is at  
7 volume 2, tab 2 of Mr Hall's disclosure.

8 So it is hardly a case of him taking anything away  
9 from the party. On the contrary the Premier seems,  
10 together with his fellow ministers, to have underwritten  
11 a great liability in order to keep the party's account  
12 afloat and the Belize Bank account was used primarily to  
13 support the Caribbean FCIB account.

14 Against that background, we submit that the internal  
15 dispute as to who held the chequebooks is somewhat  
16 unimportant.

17 So who actually held them, provided they were being  
18 used properly, but it is the Premier's clear evidence  
19 that the chequebooks were kept by the Deputy Premier for  
20 the most part. I have given you the reference in the  
21 second statement at 2.7. The four examples of him  
22 signing cheques as a sole signatory do not establish any  
23 dishonesty on his part, and whether or not that is  
24 exhaustive, they were provided by Mr Hall, we say of  
25 themselves, that is no evidence of dishonesty.

1 SIR ROBIN AULD: Is there any possible inference to be drawn  
2 from the fact they both disagreed about that matter?  
3 Who signed the cheques.

4 MR FITZGERALD: Sir, we say that that is actually referable  
5 to an internal party dispute rather than to any question  
6 of criminality. I mean, Mr Hall is obviously trying to  
7 say the Premier is extravagant. That is the, as it  
8 were, opposition clique's refrain and it is really  
9 backbiting of that nature which we respectfully submit  
10 leads to that allegation. It doesn't reflect on  
11 criminality on any way. It is part of an internal  
12 argument. But we do invite you to accept the Premier's  
13 explanation. As I say, it really may not be of great  
14 importance.

15 Sir, I turn next to the development projects and to  
16 some extent I have in opening set out our basic case in  
17 relation to those two projects.

18 (12.00 pm)

19 Essentially it is this, no bribes received or  
20 requested. Secondly, no favours received or requested  
21 on examination of the totality of the transactions and  
22 therefore no criminality.

23 We have set out our brief response that he had warm  
24 relations with certain developers but that that was part  
25 of a process of encouraging development and

1 an inevitable effect of the small nature of the  
2 jurisdiction.

3 At page 32 we have analysed the Salt Cay project and  
4 if I can take you to 4.3, our understanding of the  
5 allegation is that the Salt Cay Development promoted by  
6 Mr Hoffman and Mr Hoffman was granted Belonger status  
7 for improper reasons and may have been -- and  
8 the Premier may have been offered some inducement or  
9 benefit to facilitate those developments.

10 Now, our response briefly at 4.4 is that  
11 the longstanding Salt Cay Development was in the public  
12 interest. Any role the Premier played in promoting it  
13 was in the interests of an beneficial development for  
14 the island. As to Belonger status, Mr Hoffman had  
15 a long history going back to 1997 and that status was  
16 granted in November 2006 on the basis of his economic  
17 contribution to the country and entirely in accordance  
18 with government policy.

19 Can I just take you to the various points --  
20 SIR ROBIN AULD: Just assume those two propositions are  
21 right. Public interest, for the benefit of the TCI, and  
22 Mr Hoffman was entitled to his Belongership.

23 How far does that take us if there are other signs  
24 of possible corruption in the relationship between  
25 the two over the development of Salt Cay?

1 MR FITZGERALD: Sir, I am going to try to -- it takes us  
2 some way by way of background but (1), the question is:  
3 was there a favour.

4 SIR ROBIN AULD: That is the question. Or was there  
5 a possible favour.

6 MR FITZGERALD: The answer to this has to be seen in  
7 context. If one looks at it and says: look, he actually  
8 got rather exacting development terms; the peppercorn  
9 rent was the normal procedure for golf courses; he was  
10 required to invest 15 million in infrastructure. One  
11 says: well, where is the favour.

12 What he got was what any developer would have got.  
13 Then one says: well, where is the evidence of a bribe.  
14 Again, it is said, apart from a plane trip in 2005 with  
15 the dubious pleasure of being accompanied by  
16 Mr Lightbourne, there is the question of the J&T Banka  
17 loan. We say that was the original thesis that my  
18 learned friend was pursuing and then one has  
19 the directors of the J&T Banka saying no, it was  
20 entirely our own decision. Nothing to do with  
21 Mr Hoffman, who is neither a director nor a shareholder  
22 in the J&T Banka. Again, sir, we come back to it, we  
23 say no bribe, no favour.

24 Sir, if one looks to the history of the  
25 Salt Cay development, we accept that he played a part in

1 it, in expanding the development to include an golf  
2 course in August 2006. Sir, we deal with that at  
3 page 35 and indeed in the chronology.

4 It is accepted that Mr Hoffman wrote a letter on  
5 August 1st, asking for an extension of the development  
6 to include the leasing of land for a golf course. It is  
7 accepted that Cabinet approved that the next day in  
8 principle.

9 We say that was not unusual. The overall plan was  
10 already agreed and in any event, it was still subject to  
11 negotiations -- this is at the bottom of 4.8 -- with  
12 TCI Investment and the Attorney General's draft  
13 development agreement was not approved until November.  
14 Sir, I can give you the reference to the Premier's  
15 evidence. He deals with it in Day 4 at pages 73 to 74.  
16 He said there was no special treatment for Mr Hoffman  
17 and he develops that at page 79.

18 Sir, then it is said: well, what about his brother  
19 Chal. It is suggested, and we deal with this at 4.9,  
20 that he should have disclosed an interest because of his  
21 brother's acquisition of shares in the Salt Cay Golf  
22 Club Limited. But again, we have to look at the  
23 chronology.

24 His brother did not register the company until  
25 August 15th, having become the lawyer on August 4th, and



1 his brother Chal did not become a shareholder until  
2 December 15th. That is after the leasing of the land  
3 had gone through. After the agreement in principle,  
4 after the Attorney General had negotiated the terms.

5 Moreover, you have his evidence that he was not  
6 aware of his brother's involvement at the time he put  
7 the matter before Cabinet, which was before all this on  
8 August 2nd. Sir, I have given you the references. It  
9 is his second statement, paragraph 5.4.

10 So, sir, we say when one looks at the chronology, it  
11 doesn't support either the allegation that there should  
12 have been disclosure of his brother's interest, which he  
13 didn't know about and which is not established until  
14 later. Nor does it show that he took any exceptional  
15 steps in regard of Mr Hoffman's application. Again,  
16 I refer to the point about the peppercorn rent being  
17 normal procedure.

18 Now, sir, it is said, well, there is a favour in the  
19 form of the J&T Banka loan. We deal with that at 4.10.  
20 That it has got nothing to do with Mr Hoffman who had  
21 simply introduced him to the Chairman of the bank in  
22 2005. So long before all this. And the bank had  
23 an interest in the Caribbean which is confirmed by their  
24 letter at volume 3, page 917. It is true that they did  
25 make available a loan. This is sometime after that in

1 May 2007. But that loan, we say, was negotiated to  
2 purchase a house in Los Angeles and the loan agreement  
3 was signed with both the Premier and his wife as  
4 signatories.

5 Just drawing your attention to what the J&T Banka  
6 letter says, it is, there were no unusual circumstances  
7 in connection with the mentioned loan and it was granted  
8 in accordance with all the internal rules of the bank.

9 So we submit that there is no question of this loan  
10 constituting some secret commission by Mr Hoffman who  
11 played no personal part in the negotiation of the loan.

12 Sir, I accept it is then said: how come the golf  
13 club shares become the collateral. And the Premier has  
14 explained that, that when he sought the loan in  
15 May 2007, he offered a variety of other collateral,  
16 including a promissory note, but that the bank was more  
17 content with shares in an enterprise owned by a person  
18 with whom they were familiar, namely Mario Hoffman, and  
19 that that was particularly so because J&T were the  
20 bankers of the Salt Cay project and were familiar with  
21 the potential value of the golf course. The Premier  
22 gave evidence on oath in relation to that, Day 4,  
23 page 86.

24 That is the reason why the loan was secured on  
25 the Salt Cay Golf Club shares, but the important thing

1 is that this was a bona fide loan for the purchase of  
2 the house. As is clear from the loan document itself,  
3 it actually recites the fact that it is for the purchase  
4 of the house. This is important: from the Premier's  
5 point of view at the time, he had every reason to  
6 believe that the house would increase in value and would  
7 enable him to re-finance the house purchase in the US  
8 and thereby pay off the loan.

9 It cannot be said that this is all fantasy and  
10 window dressing. Lisa-Raye, who is no friend of his,  
11 came along and said: yes, we were in negotiations to buy  
12 a house. I think the price had gone up to 8 million but  
13 there was a negotiation for a house. They actually lost  
14 the deposit for it.

15 So the loan described as for the purpose of  
16 purchasing a house in Los Angeles was for that purpose,  
17 and we respectfully submit that supports the Premier's  
18 account and negates the suspicion that has been  
19 directed towards him.

20 Sir, again, it is said the fact that he has failed  
21 to repay the loan indicates that it was not really  
22 a loan but some kind of a hidden gift. But we submit  
23 that one can see that in fact he has to re-negotiate  
24 the loan to get a postponement and the fact that he has  
25 not made repayments merely indicates, as is clear from

1 the general state of his finances, that he has

2 a tendency to spend too much.

3 Sir, we dealt with the grant of Belonger status to

4 Mario Hoffman at 4.14.

5 Sir, turning to the Handfield allegation. We have

6 analysed that. Again, sir, I am not going to get into

7 a long dispute about Mr Handfield. I would just make

8 this preliminary point.

9 Mr Handfield in his press release is saying there

10 was an instruction to hold a special meeting and there

11 were two earlier instructions to hold special meetings.

12 When he came to give evidence, he could not back up

13 there being an instruction from the Premier to hold

14 a special meeting, and he could not back up there being

15 any earlier instructions to hold special meetings.

16 The best he could do was say: we had one meeting in

17 which I got the impression that the Premier was saying

18 hurry up.

19 Now, that is very different from a specific press

20 release saying: I was instructed unlawfully to hold

21 a special meeting of the planning board; to then come

22 back to: well, there was an informal meeting at which

23 I got the impression that he was saying speed things up.

24 Because it was an important part of his press

25 release to say there has been a specific unlawful

1 instruction to hold a meeting which is none of the  
2 Premier's business.

3 So we say he was confused, he was contradictory and  
4 he was unreliable. If one looks by contrast to Mr Clyde  
5 Robinson, what his evidence establishes, and we set this  
6 out at page 39, (i) to (iv), there was nothing improper  
7 in his view about the holding of the meeting or the  
8 presence of the developer for a short while. Indeed, he  
9 was saying you did have meetings between developers and  
10 the planning board to discuss things.

11 The Premier's dissatisfaction was with the negative  
12 recommendation as to the government project to build  
13 the dock. He was not taking the side of the developers  
14 who themselves didn't care where the dock was built.  
15 And that is backed up by Mr Clerveaux's statement at  
16 pages 44 to 45 of the addendum to volume 7.

17 He was concerned about the government dock project  
18 going ahead. At the 9th January meeting in the morning,  
19 the Premier didn't instruct anyone to convene a special  
20 meeting or order anyone to hold a special meeting. That  
21 is the evidence of Mr Clyde Robinson. I have given you  
22 the references, Day 19, page 14, lines 6 to 10 and page  
23 31, lines 4 to 5.

24 Indeed, one can go further. The idea that the  
25 planning board could reconvene was in fact first

1 mentioned by Mr Robinson himself.

2 Sir, there is no question of the Premier intervening  
3 improperly on behalf of the developers. On the contrary  
4 he was intervening properly on the part of the  
5 government. Nor is there a question of him instructing  
6 or ordering that there be a special meeting. That is  
7 clear from Mr Clyde Robinson's evidence. The initiative  
8 for that meeting came from the suggestion of Mr Clyde  
9 Robinson and then from the subsequent actions of four  
10 members of the planning board and the Vice Chairman.

11 SIR ROBIN AULD: It was from one of two options posed by  
12 Mr Robinson, wasn't it?

13 MR FITZGERALD: Yes, I am not trying to be unfair to  
14 Mr Robinson. He said there were two possibilities.  
15 Either it can go before the Cabinet and the Cabinet can  
16 veto the recommendation if they are so minded, or  
17 the planning board can meet again.

18 Then the members of the planning board appear to  
19 have taken up that suggestion because they then had some  
20 meeting away from the Premier, and the page 37  
21 reconvening instruction was given in fact by  
22 the Vice Chairman at the urging of four of the members.

23 Now, sir, the important thing about all this is even  
24 if there were an argument, which I don't propose to  
25 enter into, about whether there was some improper

1 interference with the statutory process, and we say  
2 there was none, the question is: is it corrupt or  
3 dishonest. It is only corrupt if it is at the instance  
4 of the developers or in favour of the developers.

5 (12.15 pm)

6 In fact, as we see and Mr Clyde Robinson and  
7 Mr Clerveaux accept, the developers didn't care where  
8 the dock was built. It could be the south side, it  
9 could be the north side. What they cared about was just  
10 tell us what to do, we will build it on the south side  
11 if you want or the north side.

12 It was the government quite properly that was  
13 saying: this is for the benefit of the people of  
14 Salt Cay; we want a government dock; we have had  
15 a historic commitment to do it; we have imposed that  
16 obligation on the developers; and we want to see it  
17 built. The reason they wanted it built was so that  
18 there could be construction of the airport and such  
19 like, again, building up the infrastructure of the  
20 islands, because you need barges to bring in those kind  
21 of materials.

22 SIR ROBIN AULD: I suppose in the short to middle term, and  
23 the middle to long term, it was clearly of great concern  
24 to Salt Cay Development Company as well to get on with  
25 it, because they wanted to bring in their materials for

1 the wider development for which they have been given

2 approval in principle.

3 MR FITZGERALD: The location, which was what the argument

4 was about --

5 SIR ROBIN AULD: The location was the thing that was holding

6 it up. There was an issue between two planning views as

7 to where it should be and it was unresolved, and

8 the proposal was, until the ministers interfered, to put

9 it back for more exploration, and that was all going to

10 hold up the Salt Cay development, as well as the other

11 material benefits that it would have brought to the

12 community.

13 MR FITZGERALD: Can I make one further point which I hope

14 will assist in this, which is this. Of course,

15 the speediest way, if this was a case of let's give

16 the developers what they want, the speediest thing would

17 be to hold a Cabinet meeting and say: thank you very

18 much for your recommendation, we don't accept it, the

19 thing is to go ahead. They could have done that

20 straightaway.

21 SIR ROBIN AULD: It might have attracted some attention from

22 various quarters.

23 MR FITZGERALD: It was a government plan. They were

24 perfectly entitled to do it. This was actually being

25 over-rigorous to say let's -- there should be another



1 meeting and it was a suggestion of Mr Clyde Robinson  
2 that that was an alternative.

3 Sir, what we say is you can't draw any inferences on  
4 the basis of this. You really can't draw any safe  
5 inferences. This was something that was desirable and  
6 beneficial to the government. If there was --  
7 the developers also wanted the matter resolved, it was  
8 not them who were pushing for a particular location. It  
9 was the government. It is perfectly proper to say,  
10 look, we want this benefit for the government and we  
11 want the matter sorted out.

12 Joe Grant's Cay, I am going to leave that to some  
13 extent to my learned friend Mr Ariel Misick because --  
14 but we adopt everything that was said in evidence by  
15 Minister Hanchell.

16 SIR ROBIN AULD: Does it matter whether there was any  
17 illegality in the hastily convened meeting? Does it  
18 matter either way?

19 MR FITZGERALD: No, I do not think it does, sir, with great  
20 respect. There might be a public law challenge  
21 declaration in relation to that but we say there wasn't  
22 in fact. We say that if four members want a special  
23 meeting and the Vice Chairman acts on their basis and if  
24 there were problems in contacting the Chairman for  
25 whatever reason, if he has made himself unavailable,

1 then it is lawful. But in fact it doesn't matter  
2 because this -- it has got to be evidence of corruption  
3 or dishonesty, not of, at worst, being overbearing or  
4 dispensing with the normal planning procedure.

5 In any event, sir, we would say that those rules are  
6 directory rather than mandatory.

7 Sir, can I just -- turning to Joe Grant's Cay. I am  
8 conscious that my learned friend is patiently waiting  
9 for his turn.

10 SIR ROBIN AULD: I have interrupted you from time to time.

11 MR FITZGERALD: I am sorry that I am taking a bit longer.

12 Joe Grant's Cay. Arturo Malave, we have dealt with  
13 that. It was an historic agreement in principle. At  
14 that time there was no reason to think there was  
15 anything wrong in the case of Mr Malave and indeed even  
16 to this day, all one has is the investigation report of  
17 Bob Lessermun suggesting that he had a chequered past,  
18 but nothing had been proved against him.

19 Turning to the new developers, Dr Kinay and  
20 Dr Don Gardiner, it has been suggested that they were  
21 granted preferential treatment in terms of the purchase  
22 price for Joe Grant's Cay. We don't accept that and the  
23 price was based on the study of a reputable firm of  
24 estate surveyors, BCQS, based in Providenciales.

25 The whole enterprise involved the development of

1 an uninhabited island and it is self-evident that the  
2 assessment of the value of such land is highly  
3 subjective.

4 Sir, we adopt everything that is said by my learned  
5 friend Mr Ariel Misick and indeed we adopt the evidence  
6 of Mr Hanchell on this. We say again there is no  
7 evidence of any special favour being shown to Dr Kinay.  
8 There is no evidence of any bribery.

9 Dellis Cay, I do not think is featured but we have  
10 dealt with it at 4.20 onwards.

11 The North Caicos farm, we have dealt with at 4.23.  
12 That doesn't appear to feature.

13 Rodney Propps, Star Island we dealt with at 4.24.  
14 It is known that the Star Island component of the  
15 project has been abandoned.

16 Just dealing again with the Earl Handfield  
17 allegation. He was suggesting that the Premier sought  
18 to put undue pressure on him to facilitate  
19 the Rodney Propps development. This is at 4.25.

20 Originally he had suggested that he had been given  
21 a specific instruction on several occasions. That is in  
22 the addendum to 7 at page 11 in his press release, but  
23 in his oral evidence, he went no further than to suggest  
24 there had been a meeting at Nikki Beach in which he had  
25 formed the impression that the Premier wanted the

1 process of planning approval to be speeded up. That is  
2 Day 16, pages 105 and 106. That is the reference there.

3 In fact, as the Premier makes clear in his third  
4 statement, that is his third statement at paragraph 5,  
5 all that was involved was a meeting at the Nikki Beach  
6 hotel to afford an opportunity for Mr Propps' architect  
7 to explain a new method of construction.

8 You have had the evidence of Mr Clyde Robinson that  
9 that kind of meeting was quite normal between planning  
10 board and developers and the Premier himself can't be  
11 criticised for being present since he was directly  
12 involved as the minister of development, and he  
13 convincingly denies putting any untoward pressure on  
14 Mr Handfield. Moreover we do say Mr Handfield is  
15 someone who was prepared to make an unfounded allegation  
16 in his press statement which didn't cash out when he  
17 gave oral evidence.

18 SIR ROBIN AULD: When you say he was prepared to make, you  
19 said he was unreliable.

20 MR FITZGERALD: Yes.

21 SIR ROBIN AULD: Do you go any further than that, as  
22 appeared to be implied in Mr Ariel Misick's examination  
23 of Mr Hanchell.

24 MR FITZGERALD: He may well also have been motivated by  
25 disgruntlement, as I think it was put.

1 SIR ROBIN AULD: So as to prompt him to retire and make  
2 a press statement and all that sort of thing?

3 MR FITZGERALD: I think it is really a question of  
4 hostility. He thought the government hadn't shown  
5 sufficient respect for his --

6 SIR ROBIN AULD: Maybe that, yes.

7 MR FITZGERALD: The point is he got fed up with  
8 the government. He then resigned. But if you look at  
9 the terms of that press release, it is an unlawful  
10 instruction was given. Evidence of the unlawful  
11 instruction? Nil. On two earlier occasions I was given  
12 unlawful instructions. Evidence of those two earlier  
13 occasions? Nil. In the end what it cashes out as is on  
14 one occasion, there was a meeting at Nikki Beach at  
15 which he got a feeling that the Premier was saying hurry  
16 things along, although the Premier's evidence is that  
17 there was going to be a meeting in any event.

18 SIR ROBIN AULD: I really want you to grasp the issue: are  
19 you or are you not suggesting, as Mr Misick appeared to  
20 at one stage in his examination of Mr Hanchell, and  
21 Mr Hanchell followed the line that Mr Handfield has made  
22 up, told lies about this matter because he was -- had in  
23 some way a grievance, or is it a matter of indignation  
24 and feeling a lack of respect and so on?

25 MR FITZGERALD: Sir, I do not think I need put it any higher

1 than that. That was the evidence of Mr Hanchell.

2 What I do say is this is someone who was prepared to  
3 make a very specific allegation that he had been given  
4 free instructions to hold unlawful meetings and to give  
5 it publicly and to give it to the prejudice of the  
6 Premier, and then not able to back that up in evidence;  
7 and therefore he is unreliable and one asks  
8 the question: why did he exaggerate, why did he make  
9 those specific allegations when in fact on examination  
10 he could not back them up. The answer we say is whether  
11 from indignation or enmity or simply to make a splash  
12 and draw attention to himself, he was exaggerating.

13 Then that cast doubt on the whole of his evidence.  
14 I do ask you to contrast his account of events with that  
15 of Mr Clyde Robinson in that respect. Mr Clyde Robinson  
16 says, and the Premier accepts, that the Premier did say  
17 words to the effect that: this is a government project,  
18 I am unhappy about you vetoing a government project; but  
19 that is very different from giving an unlawful  
20 instruction to hold an unlawful meeting.

21 We say that to that extent, Mr Handfield is wholly  
22 unreliable. And he is motivated by we know not what,  
23 indignation, certainly he seems to have been obsessed  
24 about not being able to import his foreign workers  
25 rather than somebody else importing their foreign

1 workers to work on various development plans.

2 The grant of immigration and Belonger status,  
3 I think I already dealt with this. But we set out there  
4 in relation to Mario Hoffman, in relation to  
5 Dr Cem Kinay and this is at page 46 and 47, in relation  
6 to Lisa-Raye McCoy and in relation to David Smith, that  
7 there is nothing untoward in any of those grants and  
8 indeed, as it is put at 5.3, Belonger status has over  
9 the years been granted both by his government and by  
10 previous governments to foreigners who have made  
11 substantial investment in development projects.

12 They qualify on the basis of the recognised criteria  
13 of making a significant contribution to the  
14 jurisdiction, whether of an economic or social nature.

15 Now, both of those questioned grants were amply  
16 justified. Remember again Mr Lightbourne saying he has  
17 known Mario Hoffman right back since 1999. He has made  
18 a big contribution to these islands and the same we say  
19 is true of Dr Cem Kinay. So there is nothing suspect.

20 There is nothing untoward. There is nothing unlawful or  
21 involving a departure from normal practice in the grant  
22 of Belonger status to them nor indeed to the other  
23 mentioned individuals, Lisa-Raye McCoy and David Smith.

24 So the acquisition of Crown land --

25 SIR ROBIN AULD: Before you move away from Belongership and

1 immigration status, have you instructions or will you  
2 have instructions to address this propriety of the  
3 system by which these matters are determined on  
4 a discretionary basis, a very wide discretion seemingly,  
5 by the governor in Cabinet, or should there be a change  
6 in the system to take it out of the hands of politicians  
7 and governors altogether?

8 MR FITZGERALD: Sir, I certainly will take instructions on  
9 that.

10 SIR ROBIN AULD: I value any help that you may be able to  
11 give me in your written submissions on whether  
12 the system needs change or whether it is all right as it  
13 is.

14 MR FITZGERALD: I will, sir. For the moment if I can just  
15 deal with phase one, if I can put it that way.

16 SIR ROBIN AULD: Yes.

17 MR FITZGERALD: Sir, the acquisition of Crown land by  
18 the Prime Minister and his family and associates; this  
19 was not really pursued by my learned friend in respect  
20 of the Premier.

21 There were only two indications in the original  
22 documentation of the Foreign Affairs Committee. One  
23 related to his nephew Jemal. We have dealt with that  
24 fully and we say it is not well founded. It was  
25 desirable for there to be affordable housing.



1 Secondly, and this we deal with at 6.3 on page 49,  
2 as to his own acquisition of land at Northwest Point,  
3 the Premier dealt with that in his evidence on Day 4, at  
4 pages 100 to 102, and he pointed out that he paid  
5 exactly what everybody else paid, both for the first 10  
6 acres and for the additional 8 acres. There was no  
7 special treatment for him, there was no special  
8 allowance for him. He was not seriously challenged in  
9 that account and we say that allegation is shown on  
10 the sworn evidence of the Premier to be completely  
11 unfounded.

12 (12.30 pm)

13 Seventhly, the government contracts.  
14 The allegations about Herzog and Johnston and the sale  
15 of Sky King have never been particularised and were not  
16 the subject of any cross-examination.

17 The Premier has dealt with them in his statement and  
18 we say there is no basis for any criticism of the  
19 Premier on these matters. Obviously if my learned  
20 friend does revive any of those sweeping allegations in  
21 his closing submissions, we will deal with it but we  
22 didn't understand my learned friend to challenge  
23 the Premier's account in relation to those matters.

24 Therefore I will move on.

25 SIR ROBIN AULD: I think before you do, you should

1 understand, I am sure you do already but I should make  
2 the point clearly to you in case not, the Commission has  
3 had to be highly selective in the matters that it has  
4 chosen to investigate closely. And the Commission has  
5 taken a number of examples in various transactions and  
6 matters to see and to test them.

7 It doesn't follow that because the Commission has  
8 not been able to investigate a number of other equally  
9 important transactions, that there is an acceptance by  
10 counsel on behalf of the Commission that there is  
11 nothing in them.

12 We are just terribly tight on time, as you can see,  
13 and we had to be selective.

14 MR FITZGERALD: I appreciate that, sir. Nonetheless I don't  
15 understand that in respect of the Premier to be  
16 a particular focus of inquiry.

17 Sir, again, we will obviously read carefully, and in  
18 the case of my learned friend, listen to whatever  
19 Mr Milne says.

20 If it does appear to still be a matter, we will seek  
21 to deal with it.

22 SIR ROBIN AULD: I think you should understand that if  
23 the Commission were to take the view that there is  
24 a pattern disclosed here in relation to various types of  
25 transactions, which might suggest that other similar

1 types ought to be investigated, that is a possible  
2 outcome. They are not cast aside forever because  
3 the Commission has not had time to deal with them.  
4 MR FITZGERALD: Sir, can I just then, for the sake of the  
5 record. He deals with Herzog at 7.2 and makes the point  
6 he had nothing to do with the decision to award  
7 the contract to Herzog nor does he have -- nor is there  
8 any reason to suspect anything untoward occurred. He  
9 deals also with Johnston in some detail at 8 and 9 and  
10 he deals with the Sky King and the business transaction  
11 between two private companies.

12 The eighth allegation which was flagged up was  
13 the adoption of the Southern Health Network. He deals  
14 with that in his original statement at pages 44 to 45.  
15 He has not been provided with any details of the  
16 question. But the suggestion in the special audit  
17 report was that the Southern Health Network has provided  
18 an ineffective and unduly expensive service.

19 It was linked -- the allegation is there were  
20 personal links between some ministers and the  
21 Southern Health Network.

22 Can I make it clear for the Premier, he has no links  
23 with the Southern Health Network at all, whatever  
24 the position be in relation to other ministers.

25 The decision to select the Southern Health Network

1 was taken by Cabinet, and it was in fact on the basis of  
2 submissions made by the then minister of health which  
3 suggested a 20 per cent saving if TCI transferred from  
4 Canadian Medical Network to Southern Health Network.

5 Of course Lillian Boyce dealt in detail with that  
6 and why she said it was a better deal. We respectfully  
7 submit there is no basis for saying that the Premier  
8 either had any basis to favour or did favour or made any  
9 unwise decision as part of the Cabinet in that respect.  
10 He simply followed what appeared to be perfectly sound  
11 recommendations that Southern Health Network could  
12 provide a better service.

13 Sir, as to the final issue, that is to say  
14 the tendering process in relation to the building of the  
15 hospitals. Again, that is something that has been aired  
16 publicly and suggested that there is something at fault.  
17 He dealt with it in his original statement at part 9,  
18 page 45. He made the point that Johnston International  
19 did get the contract for the construction of the  
20 hospital in late 2007, early 2008. The government had  
21 its own advisory team, legal, financial and medical to  
22 advise on the whole project. The decision to award  
23 the construction contract to Johnston was that taken by  
24 the health provider not by the government.

25 So we say there is no question of the Premier

1 influencing, still less taking the decision to award  
2 the construction contract to Johnston. Indeed he draws  
3 attention to the lengthy Cabinet minute which shows that  
4 everything was open, transparent and legitimate in that  
5 regard.

6 Sir, those are the submissions I make in response to  
7 each of the allegations. Can I just invite these seven  
8 conclusions.

9 Firstly, that there is no evidence of any corruption  
10 or bribery by developers of the Premier.

11 Secondly, that there is no evidence of any criminal  
12 dishonesty by the Premier.

13 Thirdly, that such failings as there were on  
14 the Premier's part and that he has admitted were not  
15 criminal in nature, but of the nature of excessive  
16 expenditure for non-declaration.

17 Fourthly, there were failures to disclose in the  
18 Parliamentary register, but for these failures he is  
19 answerable to Parliament and no different than other  
20 members of Parliament over the years.

21 Fifthly, there were arguably some unnecessary  
22 extravagances, but for those two he is answerable to  
23 Parliament and to the people of the Turks & Caicos, and  
24 they have to be seen in the context of the undeniable  
25 fact that they came within a period in which he raised

1 the profile of the islands and massively boosted tourism  
2 and inward investment. That was to the benefit of the  
3 people as a whole.

4 Sixthly, we submit there is no basis to recommend  
5 a criminal investigation. The investigation, as it  
6 were, is now and has taken place.

7 Seventhly, and in any event, such an investigation  
8 would be pointless because he could not possibly receive  
9 a fair trial for the very reasons identified by Sir  
10 Louis Blom-Cooper in 1986, and for the reasons that  
11 I have sought to set out in the introduction, of the  
12 fact that there already in effect has been trial by  
13 media; there has already been massive exposure in  
14 the press of inadmissible evidence; there has already  
15 been a compulsory process which wouldn't have otherwise  
16 occurred; and he has already been denied many of the  
17 safeguards which would have been accorded to him had  
18 the decision been that the proper course of action was  
19 to proceed by way of criminal investigation.

20 We respectfully submit that he has co-operated, that  
21 he has endured a most searching inquiry, and that though  
22 naturally and we understand you have had to focus on the  
23 negatives, we invite you not to forget the many  
24 positives, the many ways in which this Premier has  
25 served the country and empowered the people of these

1 islands, and not to reach the conclusion that there is  
2 any need for the instigation of further investigations  
3 into either dishonesty or corruption.

4 Sir, those are my submissions. If there is anything  
5 further you would wish me to deal with in written  
6 submissions, we will seek to assist in any way. You  
7 have helpfully flagged up some issues and we will  
8 obviously seek to deal with others.

9 SIR ROBIN AULD: May I mention just one more. It is  
10 a general enquiry for your assistance: what, if any,  
11 distinction should I make about the evidence given to  
12 the UK Foreign Affairs Committee from that given direct  
13 to me in this Inquiry?

14 As you can see, we have treated the evidence given  
15 to the Foreign Affairs Committee on its provision to us  
16 as evidence in the Inquiry. Is there any distinction  
17 that you say we should draw between it, whatever weight  
18 we give to any of it?

19 MR FITZGERALD: Obviously, sir, we would say that  
20 the evidence that has been tested before this Commission  
21 is obviously of superior quality to the evidence  
22 elicited without the formal safeguards, such as they  
23 are, that have attended this Inquiry. We would say  
24 priority to the evidence that you have heard yourself.  
25 Sir, again we say that to the extent that they heard

1 evidence in secret, it has all the dangers of that sort  
2 of evidence. To the extent that for example we have  
3 the volume 5, the submissions of the opposition to  
4 the Foreign Affairs Committee essentially, many of those  
5 allegations, for example, the ones about Johnstons have  
6 on examination proved to be completely unfounded, we  
7 respectfully submit. We have set out our response in  
8 the Premier's first statement.

9 So we certainly say priority to that which you have  
10 heard, you have seen tested, and the Premier has had  
11 a proper opportunity to deal with.

12 So if there is any material, perhaps I had better go  
13 back and check whether there is anything else, but  
14 I think we have covered the additional suggestions in  
15 parts 5 to 9 of our statement and of our submissions.

16 Some of those do overlap with allegations put before  
17 the Foreign Affairs Committee.

18 SIR ROBIN AULD: So no distinction between two sources of  
19 evidence, save the important one, when comparison is  
20 made with the evidence that has been tested to the  
21 extent that it has in these oral hearings?

22 MR FITZGERALD: Yes. We say the evidence here should have  
23 priority but also the allegations which this Commission  
24 after its enquiries has seen as central, and therefore  
25 given us a full opportunity to meet and deal with, are



1 the ones that we understand are the primary ones of  
2 concern.

3 I am not saying that you can't have regard to the  
4 others, but we would certainly wish to be alerted if any  
5 of the other ones were still of serious concern.

6 I suppose that could be done in the Salmon letter stage.

7 SIR ROBIN AULD: Mr Fitzgerald, I want to thank you for  
8 the contribution that you have made to the Inquiry and  
9 to express my admiration for the way in which you have  
10 taken a hold of your case in a very short time and  
11 produced a masterly skeleton argument upon which your  
12 submissions have been based today. It must have been  
13 quite a rigorous exercise for you and I am very  
14 appreciative of it.

15 MR FITZGERALD: Thank you, sir.

16 SIR ROBIN AULD: The Inquiry, as you know, will continue  
17 until tomorrow in its oral phase and I believe you leave  
18 today.

19 MR FITZGERALD: I leave tonight or early tomorrow morning,  
20 sir.

21 SIR ROBIN AULD: Then I should tell you that at the  
22 conclusion of the submissions tomorrow and before I end  
23 the oral hearings, I shall make a short statement about  
24 how the matter is to proceed from there.

25 The next stage, about which we have already spoken

1 in passing, is the opportunity to make written  
2 submissions by any party represented here following  
3 the oral hearings.

4 I have had to have a look at the programme which has  
5 been shifting backwards since October of last year. We  
6 eventually came out here to do in January what we had  
7 hoped to do in late October and we had hoped to do it in  
8 two weeks, not four and a bit weeks, and through  
9 nobody's fault, certainly at the bar, and I hope not  
10 the Commission, everything has slipped a bit.

11 What I shall be saying tomorrow is I will expect  
12 written submissions within ten days, not 14 days after  
13 tomorrow. That is by Saturday, 21st February. I am  
14 forced to attenuate the period.

15 MR FITZGERALD: We will do our best.

16 SIR ROBIN AULD: Do your best.

17 MR FITZGERALD: I am going to make a plea for 11 days  
18 because that weekend was one I have set aside.

19 SIR ROBIN AULD: You will do what you can, I know.

20 MR FITZGERALD: Thank you very much, sir, and I am very  
21 grateful for your kind remarks. Sir, my learned friend  
22 Mr Maurice Glinton will be holding the brief and will be  
23 present to represent the Premier. But as I understand  
24 it, it is not a question of: That is it, we have made  
25 our submissions, everything else is in writing.

1 SIR ROBIN AULD: And you can come back, and I hope for all  
2 the help that you can give me in the time available on  
3 part 2 of my terms of reference as well.  
4 (12.45 pm)  
5 SIR ROBIN AULD: Now, it is 12.45. Mr Oliver Smith, your  
6 time is about an hour.  
7 MR SMITH: Yes.  
8 SIR ROBIN AULD: To speak on behalf of three of your  
9 clients.  
10 MR SMITH: Yes.  
11 SIR ROBIN AULD: Would you like to start now, or would you  
12 rather start and do it all in one go at 2 o'clock?  
13 MR SMITH: I would much prefer to do it in one go.  
14 SIR ROBIN AULD: 2 o'clock.  
15 (12.45 pm)  
16 (The short adjournment)  
17 (2.00 pm)  
18 Closing submissions by MR SMITH  
19 SIR ROBIN AULD: Now, Mr Smith, what we lack in numbers this  
20 afternoon, I expect you to make up in enthusiasm.  
21 MR SMITH: I will try my best, Sir Robin.  
22 SIR ROBIN AULD: Yes, Mr Smith.  
23 MR SMITH: For the record I submitted a copy of my speaking  
24 notes.  
25 SIR ROBIN AULD: Yes, I have it, and I am most grateful to

1 you for it.

2 MR SMITH: Thank you. Like my colleagues I would like to  
3 start off by thanking the Commission staff for the way  
4 they have assisted me in my preparation for these  
5 hearings, and I think my biggest thanks has to go to  
6 the court stenographers who I think had a somewhat  
7 herculean task just to try to keep up with the pace of  
8 my speaking and I do intend to try to be a little bit  
9 more easy on them as I proceed this afternoon.

10 SIR ROBIN AULD: Thank you.

11 MR SMITH: These submissions are being made on behalf of my  
12 clients Honourable Floyd Hall, Honourable Lillian Boyce  
13 and Honourable Don-Hue Gardiner.

14 As the Commission is aware, two of these individuals  
15 are elected members and one, Honourable Don-Hue  
16 Gardiner, is an appointed member, having been appointed  
17 in February of 2007.

18 I would just like to bring the Commission to  
19 the terms of reference which I am sure you are familiar  
20 with.

21 But just for purposes of ease and to have my  
22 arguments flow a little better, it is specific and it is  
23 to "inquire into whether there is information that  
24 corruption or other serious dishonesty in relation to  
25 past and present elected members of the

1 House of Assembly ... may have taken place in recent  
2 years".

3 The core issues there, the core terms there are  
4 corruption and serious dishonesty.

5 Having done that, having made that consideration,  
6 the Commission's next duty is to report to the Governor  
7 its preliminary findings and recommendations and those  
8 will concern whether or not there should be criminal  
9 proceedings, criminal investigations by the police, any  
10 recommendations as to any systematic weaknesses in  
11 the system and any other matters related to its terms of  
12 reference.

13 So it is my submission that the task that  
14 the Commission faces is to see to what extent there is  
15 credible evidence produced not only in the oral  
16 testimony under oath but what was produced in the  
17 documents and in those private sessions that  
18 the Commission are privy to.

19 After reviewing those evidence, whether  
20 the Commission come to a conclusion, I would say to  
21 a definite conclusion that any of my clients, Mr Hall,  
22 Mrs Boyce, or Mr Don-Hue Gardiner was involved in  
23 corruption or serious dishonesty in the relevant time  
24 period.

25 What I propose to do is to deal with each client

1 individually and to address what I deem are  
2 the pertinent factors as it relates to each client, and  
3 then to make a suggestion to the Commission as to what  
4 I think recommendations should be in relation to this  
5 hearing.

6 But first I should start off by addressing  
7 corruption. We all know what dishonesty is, we all know  
8 what serious dishonesty is, but I think "corrupt" is  
9 a term that has not been defined. In my research I come  
10 to the conclusion and it is my submission that acts or  
11 acts of corruption are not per se crimes. There  
12 is essentially, in my view, no legal definition as to  
13 what corruption is. I mean, there are certain acts  
14 that -- acts of corruption that are crimes, I would say,  
15 like bribery. For that I think we need to look to the  
16 dictionary.

17 As far as a literal interpretation of that word is  
18 concerned, I think the dictionaries are basically  
19 ad idem on that term. It means impairment of integrity,  
20 virtue or moral principle. It is my submission that it  
21 is this general definition that the Commission should  
22 have in the forefront of its mind in assessing,  
23 dissecting and reviewing the evidence as relates to my  
24 these clients.

25 Before I address each client and their various

1 issues individually, there is a preliminary point that  
2 I think is common to each and all of these clients.  
3 I think I will address that first. That is in relation  
4 to the omissions on the declaration forms.

5 During the course of the evidentiary portion of the  
6 Inquiry, it has become apparent that there were certain  
7 omissions from the declaration forms which are common to  
8 all the witnesses who were members of Parliament.  
9 Essentially these omissions related to financial  
10 sponsorships and the gift portions of the declaration  
11 form.

12 It is my submission that, however, what is apparent  
13 from the testimony of these witnesses is that there was  
14 not any venal intent, not an intent to deceive, not  
15 an intent to perpetrate a fraud when they made  
16 the submissions.

17 The fact is that the Commission rightly finds and  
18 indicated during the course of these hearings that none  
19 of the members of Parliament from either party made  
20 these declarations.

21 Now, the question is whether or not the fact that  
22 nobody made these declarations makes it right, and  
23 I would submit no, I would submit that the fact that  
24 neither people from the PDM or people from the PNP made  
25 these declarations, it doesn't make it right.

1 I think the Commission referred to a situation where  
2 you were speaking to a school teacher and you said,  
3 listen, everybody else did it so I should be okay. It  
4 is not our submission that because everybody else did  
5 it, it should be okay.

6 I think our submission is the fact that everybody  
7 did it, it offers a reason, though we are not saying it  
8 is a strong reason, but it also reinforces the argument  
9 that it was not done with any venal intent or any intent  
10 to deceive. It was, for want of a better phrase,  
11 an adoption of what the Premier calls a cross-party  
12 culture. I think when you look at everything in its  
13 true perspective, especially in relation to my clients,  
14 you will find that that omission alone, without more,  
15 does not show corruption, does not show dishonesty, in  
16 fact does not show serious dishonesty and does not speak  
17 to any acts of illegality.

18 Having said that, I will move to the issues as they  
19 relate to Deputy Premier Floyd Hall. I have identified  
20 nine issues which I think should be -- should have  
21 caused the Commission some concerns, and I think those  
22 are the issues that I will address in this time that  
23 I have with the Commission.

24 SIR ROBIN AULD: Thank you.

25 MR SMITH: The first issue is that dealing with the PNP



1 matters. I use the caption "PNP Matters" to cover what  
2 I call are political contributions and the campaign  
3 gifts that were given to the PNP.

4 Now, there was a lot of testimony in relation to the  
5 activities of the PNP, especially in regulation to the  
6 receiving and disbursing of political contributions.

7 In fact, it is my submission that a great portion if  
8 not the majority of the Deputy Premier's testimony was  
9 spent on that issue.

10 He was and is the Treasurer of the party and I would  
11 submit it is meet and right that he takes responsibility  
12 for the manner in which the PNP accounts were handled.

13 Now, the donations and the political contributions  
14 to the PNP came in two forms. There were those paid  
15 directly to the party and the party in turn either  
16 disbursed those funds to individual candidates or they  
17 would use those for campaigns and other activities that  
18 the party was putting on.

19 Secondly, the funds would sometimes go directly to  
20 an individual candidate to assist in their political  
21 endeavours.

22 As these relate to Honourable Floyd and other  
23 candidates, in fact there were instances when some of  
24 these political contributions went directly to their  
25 personal accounts and in fact even to their credit

1 cards.

2 (2.15 pm)

3 We do understand why that would lead one to be  
4 suspicious or has somewhat a scent of the fact that  
5 there is something wrong with it.

6 But I am saying that alone does not elevate it to  
7 the level of corruption. Why do I say that? It is  
8 simple and I think it is not challenged in this hearing  
9 that there is no legislation in the TCI that mandates  
10 how political contributions should be treated. It is  
11 important enough that I think I should repeat it,  
12 because the fact that there is no legislation that deals  
13 with political contributions and campaign contributions,  
14 that deals with how they should be dealt with, how they  
15 should be spent, how they should be accounted for, it  
16 leaves the system that we have.

17 Now, the argument can be made that because a system  
18 is somewhat, for want of a better word, loose, is  
19 a possibility that individuals who receive these sums  
20 could have used it to their disadvantage and maybe could  
21 have participated in corrupt activities. That is  
22 a reasonable argument and that is one that we see, but  
23 is one that we do not think the evidence bear out.

24 As a matter of fact, what we have here is situations  
25 where the money was paid and there is no evidence, there

1 is no evidence at all that Honourable Lillian Boyce or  
2 Honourable Floyd Hall used these funds for any other  
3 purpose other than campaign -- to further their  
4 political endeavours.

5 Now, we see situations, and I am sure the Commission  
6 intends to address this, where there were payments to  
7 the credit cards.

8 The explanation for that, and although it has been  
9 challenged, I do not think there is any evidence to  
10 rebut it, I think just challenge it would not be  
11 sufficient, there is evidence that these individuals,  
12 and not only these individuals but other candidates  
13 would pay out of their own pockets for their political  
14 endeavours, and by way of reimbursement the parties  
15 would pay the sum personally, or they would direct  
16 the party to pay the sum to my credit card because  
17 I used that sum and I need to be reimbursed for it.

18 Now, there was some argument made by Mr Milne that  
19 the mere fact that these donors were making frequent  
20 donations to the parties, and I think there were some  
21 persons' names that were picked out --

22 SIR ROBIN AULD: Some of the big donations.

23 MR SMITH: Some of the big donations and some of the large  
24 donations, so we are looking at a situation where there  
25 are large donations, we are looking at a situation where

1 a particular donor is a repeat donor, and in fact every  
2 time he repeats they are in large sums. We do  
3 understand the argument that that could lead to the  
4 perception of bribes but I think just saying that  
5 doesn't raise it to the level of bribes. I think there  
6 is no evidence. I think the record speaks eloquently to  
7 the absence of any evidence, especially in relation to  
8 Honourable Floyd Hall and Lillian Boyce.

9 SIR ROBIN AULD: There are two species of bribes in play,  
10 aren't there, here in this section of your submission?

11 It is suggested there are bribes paid by politicians to  
12 buy votes.

13 MR SMITH: Yes.

14 SIR ROBIN AULD: And bribes paid by developers to buy  
15 politicians.

16 MR SMITH: Yes. And I am not saying that the argument or  
17 the perception is not one that is not -- that is not  
18 supported by the evidence, but I am saying it is only  
19 supported -- only a part of the evidence that supports  
20 that is the frequency of the donations and the size.  
21 There is nothing in the record, no evidence at all, that  
22 any -- dealing with the first situation, any potential  
23 voter was persuaded by these donations to vote in  
24 a particular manner. I am sure the Commission has been  
25 very thorough and I am the Commission, having seen

1 the perception that these gifts may raise, would have  
2 caused some investigation to be made in that regard.

3 As I indicated before, while I am not privy to the  
4 full extent and details of what the Commission has done  
5 before, I must submit that there is no evidence on  
6 either ground, there is no evidence that an electorate  
7 changes vote or voted for the PDM or voted for my  
8 clients solely because they received some assistance in  
9 relation to light bills or funeral expenses.

10 Similarly, and I speak especially in relation to  
11 Floyd Hall and Lillian Boyce, there is no evidence,  
12 nothing before the Commission where one could say  
13 specifically and definitively that some favour was done  
14 for a developer or the payments caused Lillian Boyce or  
15 Floyd Hall to look away and allow the potential  
16 developer to do as they may.

17 That evidence is just not there. If that evidence  
18 is not there, then, one would be hard pressed to say  
19 that they are corrupt or they are guilty of serious  
20 dishonesty by the mere fact that their political  
21 campaign funds were handled in that way.

22 SIR ROBIN AULD: There is no danger of my doing that because  
23 as you pointed out in my opening remarks, that is not my  
24 job. I have a much lower threshold than that, which is  
25 one that I have to grapple with as well as you.

1 MR SMITH: Yes, I understand.

2 I do intend to move to another point. That is to  
3 the state of the Belize Bank account.

4 We do accept, the Deputy Premier accepts that he was  
5 unable to reconcile this bank account and he does accept  
6 that as a CPA, as a trained accountant, as a Treasurer  
7 of the PNP that the criticism about the manner in which  
8 he handled those accounts are somewhat justified. But  
9 the mere fact that they are justified does not defeat  
10 the significant fact that there is a reason for it.

11 There is a reason why he was not able to reconcile these  
12 accounts. We say it is not an excuse, it is a reason,  
13 it is a definitive reason based on the evidence  
14 before this Tribunal.

15 We further say that it is not a reason that is  
16 plucked out of the air just to give the Honourable  
17 Deputy Premier some leg to stand on.

18 We are saying that the infrastructure on which he  
19 has based these arguments is in the record. And why do  
20 we say that? We know from the evidence that for  
21 the majority of the time, the chequebooks were in the  
22 possession of the Premier. Now there is a dispute as to  
23 that. The Premier disputes this but we urge  
24 the Commission to look at the records that is before  
25 you.

1       We gave only a sampling of instances, where I think  
2       there were at least four or five cheques which are  
3       signed solely the Premier. There are at least two or  
4       three bank transfers that was done only on one  
5       signature.

6       The Commission is directed to look at those  
7       samplings.

8       SIR ROBIN AULD: It is important for you, if it is the case,  
9       to make this point that it was the Premier who had  
10      the chequebooks for most of the time, not the Honourable  
11      Floyd Hall.

12     MR SMITH: That's it.

13     SIR ROBIN AULD: Why is it important for you to make this  
14     point?

15     MR SMITH: It is important for us to make this point because  
16     he took some criticism, the Deputy Premier, as to the  
17     fact that he was unable to reconcile and to have full  
18     control of the bank -- Belize Bank account in the same  
19     manner that he had over  
20     the First Caribbean International Bank account.

21       For that he was lashed severely in questions by  
22     Mr Milne and it was Mr Milne's right to put those  
23     questions to him, we are not saying that. We are saying  
24     there was a reason for that and not only is his  
25     political career at stake with this criticism but his

1 professional career as an accountant was somewhat  
2 damaged by this. So we need to establish to  
3 the Commission the reasons why he had great difficulty  
4 reconciling that account and never had a better handle  
5 on that account and that is why we say, and one of the  
6 reasons we give to the Commission is for the most part,  
7 majority of the time, the Premier had those chequebooks.

8 SIR ROBIN AULD: So it really goes to the -- this far but  
9 perhaps no further at the moment. It removes some of  
10 the criticism of him as a professional accountant in his  
11 managing of the PNP's funds under his control alongside  
12 that particular bank account.

13 MR SMITH: In relation to the Belize Bank, yes. We think it  
14 is important that that occurs.

15 I just want to press one other matter under that  
16 heading and we submit that another one of the reasons  
17 quite separate and apart from the fact -- I should not  
18 say quite separate and apart from the fact, it works  
19 hand in hand with the fact that the Premier had  
20 a chequebook for the majority of the time -- was that it  
21 was testified by the Premier's wife, Lisa-Raye  
22 McCoy Misick, that the Premier had a particular  
23 relationship with an individual at the bank, and I think  
24 her testimony was that individual's name was  
25 Andrew Ashcroft. I think her testimony was that that



1 person made facilities for him, I think her testimony

2 was.

3 SIR ROBIN AULD: Where does that leave me? It points

4 the finger at the Premier, does it?

5 MR SMITH: Yes. We are not suggesting when we say that that

6 the bank was corrupt or the Premier was corrupt; we are

7 just suggesting that this is an additional reason why my

8 client Mr Hall had some great difficulty in reconciling

9 and dealing with that bank account.

10 We go on to say that even if the Commission was to

11 disagree totally with me and say it was totally

12 Mr Hall's fault, forget the Premier was handling

13 the account, all it shows was maybe some sloppiness,

14 some mismanagement but the mere fact that the bank

15 account was handled in that manner still doesn't rise to

16 the level of corruption or serious dishonesty.

17 I can move to my next point. That's similarly with

18 the Belize Bank account, there were some allegations --

19 it was proven in fact that my client never revealed

20 the Belize Bank account to the members of the PNP. We

21 say that the fact that the trustees of the PNP made

22 a decision not to reveal the existence and the state of

23 the Belize Bank account does not amount to a fraud on

24 the party or doesn't amount to a fraud on the

25 contributors of that bank account.

1       We say also that the trustees for whatever reason  
2       made a decision not to disclose this matter at their  
3       convention or congress.

4       My submission is that but for being deprived of the  
5       knowledge of the existence of this account, no hardship  
6       was suffered by the members, no hardship was suffered by  
7       the contributors, no one was harmed. Lack of knowledge  
8       didn't result in any harm. No one was defrauded and no  
9       one was induced or seduced to act to their detriment.

10      As a matter of fact, what we later learned is that  
11      the account had a negative balance, and ultimately  
12      the Honourable Hall and two other members of the PNP  
13      took out a loan wherein he personally gave the bank  
14      a guarantee to repay this overdraft.

15      SIR ROBIN AULD: Did you just say that the decision to keep  
16      it from the party membership was made at a congress of  
17      the party? Did I mishear that?

18      MR SMITH: I say it was not revealed at a congress of the  
19      party. It is my understanding that the decision was  
20      made by the trustees of the party.

21      My further argument is that, whilst there may have  
22      been an ethical obligation to disclose it, we certainly  
23      know that there was no legal obligation to disclose it  
24      and I would repeat that whether there was an ethical or  
25      a legal obligation, nobody suffered any harm. I mean,

1 it was a situation where they just never had

2 the knowledge of it.

3 One should buttress that argument to support my  
4 submission that there was no corruption or dishonesty or  
5 no intent to deceive on the part of my client by the  
6 fact that he ultimately, personally along with two other  
7 persons, guaranteed the debt, that overdraft was  
8 converted into a loan and he and two other members  
9 guaranteed it. The question is: where is the benefit to  
10 him; where is the corruption, where is the dishonesty.  
11 All that occurred was that he incurred a debt.

12 My fourth, and I think one of the more significant  
13 issues is in relation to what I would term  
14 the relationship with Mr Padgett and the finder's fee.

15 Much was made of the finder's fee that  
16 the Deputy Premier received from Richard Padgett.  
17 Again, I submit there is nothing dishonest, corrupt or  
18 illegal about that. To support this submission I think  
19 we need to examine the details of the circumstances  
20 surrounding that deal.

21 (2.30 pm)

22 Honourable Hall testified that he acted as a buyer's  
23 agent when he introduced Mr Padgett to  
24 the Third Turtle Hotel.

25 It is significant to know that this was done in

1 2002. In 2002 that was a time when the Deputy Premier  
2 was not a member of government, he was not a Member of  
3 Parliament, he was not an elected member, and there is  
4 nothing sinister, suspect or dodgy about him introducing  
5 a prospective purchaser to a business opportunity.

6 Now, the issue became -- it became a issue because  
7 the deal was not consummated until, I think, 2004 and  
8 that was at a point in time when the Deputy Premier was  
9 in Parliament. As a matter of fact he was  
10 Deputy Premier at that time.

11 Now, surely one cannot argue that both parties  
12 foresaw that at some point in time, let's make this  
13 deal, I am going to come in power, I am going to be  
14 a Deputy Premier, I am going to be a minister of finance  
15 and I am going to do something for you. We can't argue  
16 that. That is an argument that probably wouldn't hold  
17 water, given the fact that this deal is entered into in  
18 2002, and there is no evidence that neither Mr Padgett  
19 or Deputy Premier are psychics.

20 What the Commission is arguing, and before I say  
21 that, once the deal was consummated, just to give you  
22 more background of what occurred, Honourable Hall sent  
23 Mr Padgett an invoice for his services.

24 He charged a finder's fee and he charged  
25 an additional -- I think the finder's fee amounted to

1 300,000 and he charged an additional \$75,000 for general  
2 advice.

3 We knew that he sent an invoice. The Commission was  
4 aware of this. The Commission spoke to Mr Padgett.  
5 Mr Padgett provided the Commission with the invoice.

6 All the evidence shows here that this was  
7 an above-board, arm's length deal.

8 However, what Mr Milne has argued is that the deal  
9 becomes suspicious by the mere fact that  
10 the Deputy Premier gave the Premier a substantial  
11 portion of his fees. I think the amount that was  
12 testified to was somewhere in the region of \$160,000.

13 Surely this cannot be true. It cannot be true that  
14 the fact that a deal that started out at arm's length,  
15 started at a point in time when my client was not in  
16 a position to confer any benefit, it started at a point  
17 in time when my client was not in a position where he  
18 could confer any benefit to anybody, became suspicious  
19 or became dodgy because he gave some money to the  
20 Premier.

21 It is common knowledge that at the point in time  
22 when Honourable Hall gave the Premier this money, it was  
23 around the time when the Premier was involved in a very,  
24 very expensive wedding.

25 Honourable Hall advanced him this money to help

1 defray his costs. The argument was made that this must  
2 have been a kickback. What is interesting is that that  
3 is the extent of the argument. It must be a kickback  
4 but one must ask now where is the evidence? Where is  
5 the supporting evidence that shows that this payment was  
6 a kickback? Especially in light of the fact where we  
7 know that the Premier had a wedding, we know that he had  
8 an expensive wedding. Where is the evidence to support  
9 this type of allegation?

10 I say there is none. There is no evidence to  
11 support a kickback. There is no evidence of any -- and  
12 the kind of evidence that we would need to see to  
13 justify that allegation, that allegation, I think  
14 that can only serve to sully my client's reputation.  
15 The kind of evidence we would need to see in that regard  
16 is maybe there is some evidence of a meeting between  
17 the Premier and Mr Padgett, or some evidence of my  
18 client doing some favour for Mr Padgett, or some  
19 evidence that the Premier is a person who is in  
20 the business of taking kickbacks on any deals.

21 We don't see that. So all we have is a bald  
22 allegation that is not supported by one iota of  
23 evidence.

24 Mr Milne makes a point, and I think it was his right  
25 to make that point and I think he is somewhat justified

1 in making that point, even though I don't think it is  
2 a point that is supported by the evidence, and a point  
3 that he subsequently infers is that following  
4 the payment, Honourable Hall signed a document that  
5 served to grant permission to Mr Padgett to build up to  
6 seven storeys.

7 I think, Mr Milne, it is my anticipation that at  
8 some point in time he will address the Commission and  
9 say: well, this money that Honourable Hall received was  
10 not in fact a finder's fee but was given in order to  
11 have him sign a document to allow Mr Padgett to build up  
12 to seven storeys. Surely that can't be true, and why do  
13 I say that? I say that because you have to examine  
14 the circumstances under which that document was signed  
15 by Mr Hall. These are the circumstances and I don't  
16 think any of these facts were in dispute.

17 At the point in time the Premier was out of the  
18 country. The Premier was a minister of planning at that  
19 time. The Premier instructed Mr Hall in his capacity as  
20 Deputy Premier and that is a regular thing when  
21 the Premier leaves, somebody is appointed  
22 Deputy Premier, and that person is charged to carry on  
23 the duties of the Premier, and that person, whether it  
24 is Honourable Hall or one instance it is Honourable  
25 Boyce or some time Minister Hanchell, they signed

1 documents on behalf of the Premier. That is exactly  
2 what he did. He was instructed to sign the document  
3 granting permission and he did that.

4 At the point in time when he signed the document, it  
5 is undisputed, there is no challenge that he was not at  
6 that point in time exercising his discretion.

7 Indeed, if the Commission correctly remembers,  
8 Mr Hall indicated, and again that was not challenged by  
9 Mr Milne, that he at all times had told Mr Padgett that  
10 five storeys was the way to go and not seven.

11 Now, we are aware that the -- Mr Hall's signature on  
12 that document is challenged by the process for judicial  
13 review.

14 But argument that was made in the judicial review  
15 and argument that was successful was a technical one.  
16 You are saying basically: when you sign this document,  
17 Mr Hall, you sign in your capacity as Deputy Premier,  
18 acting as Premier and not minister of planning. That  
19 was the only reason why that decision was overturned.

20 So again I say to the Commission that there is  
21 nothing sinister about this deal, nothing dodgy, nothing  
22 corrupt, nothing dishonest and surely nothing illegal.

23 Moreover, there is not any evidence produced before  
24 this Tribunal that any benefit was conferred on  
25 Mr Padgett as a result of that arrangement by Mr Hall,



1 that the government acted in any way in Mr Hall's  
2 direction to favour Mr Padgett as a result of that deal.

3 The fifth issue I would like to bring to the  
4 Commission's attention is the land deal in  
5 Northwest Point from which the proceeds -- some of the  
6 proceeds of that land deal was loaned by my client's  
7 brother to the Premier.

8 I should start by saying that there is no evidence  
9 before the Commission that speaks in any way to the  
10 Deputy Premier's involvement in this deal but for  
11 the fact that he was approached by the Premier to get  
12 consent from his brother, Quinton Hall, to loan him some  
13 money.

14 It is obviously clear that the Premier was aware of  
15 the monies Quinton Hall received as a result of this  
16 deal. The Commission can feel sure of this because he  
17 was aware that Honourable Boyce's brother got some money  
18 and Honourable Jeffrey Hall's brother also received some  
19 money.

20 Well, there were some disputes here as to who  
21 actually made the loan. My client says that he was not  
22 the person who made the loan, his brother did. I don't  
23 think I need to waste any time on that. I think  
24 the fact is that it doesn't matter who loaned the money;  
25 the fact is that the money came from a particular source

1 and the issue is whether or not that loan, as Mr Milne  
2 contends, was a kickback.

3 To be fair to the Commission, Mr Milne presents as  
4 the basis for his suggestion the undisputed fact that  
5 other ministers also loaned sums to the Premier and  
6 these sums came arguably from the same transaction.  
7 Again our response to that, again it was around the time  
8 of his wedding. Again one point which I think is  
9 missing and needs to be said is that the Premier is  
10 a strong personality.

11 What we have seen and I think the most logical  
12 conclusion to be drawn from the evidence that we have is  
13 not kickbacks. What we have seen is a situation -- and  
14 I submit that if the Premier is aware that a member of  
15 his Cabinet or a member of his party or a relative of  
16 a member of his party has come into some money, he  
17 borrows some. That is what it is. If he is aware that  
18 you have some money, he comes and borrows some from you.  
19 And that is what happened with Honourable Lillian Boyce,  
20 when he pressed her, pressed her, pressed her, that is  
21 what happened with the Honourable Jeffrey Hall, that is  
22 what happened with the Deputy Premier in this case.

23 There was no kickback. One of the reasons why  
24 I would say, again repeat the arguments I made earlier,  
25 I mean, there is no evidence of conversations between

1 these so-called co-conspirators that reflect a kickback.

2 I think what also speaks eloquently to the fact that it  
3 is not a kickback is that this money is coming from  
4 the ministers.

5 One would assume that if this was a kickback,  
6 the money would be coming from the developers and not  
7 from the ministers. What is also important to note, if  
8 there was a kickback in relation to this transaction,  
9 there were four people involved in this transaction.

10 There was Honourable Samuel Been, there was  
11 Jeffrey Hall, Quinton Hall and Earlson Robinson, and if  
12 each person was required to give a kickback, where is  
13 the evidence that Samuel Been gave the Premier a loan or  
14 paid some money to the Premier? I think with  
15 the greatest respect, that argument cannot hold.

16 I move on to the situation surrounding  
17 the appointment of Southern Health Network as  
18 an overseas medical provider.

19 In that vein it is contended by the Commission that  
20 the Deputy Premier overrode the decision to have limited  
21 tender in relation to two companies and in effect  
22 directed the Cabinet to decide in favour of the company  
23 that his friend or part-time client owned.

24 We accept the criticism that he should have revealed  
25 on the record the full extent of his ties to

1 Delroy Howell who, as the Commission is aware, was  
2 a directing spirit behind Southern Health Network.

3 Honourable Hall proffers a reason why he didn't do  
4 so and we think it is a good reason. He said he  
5 believed that the members of Cabinet were aware of his  
6 relationship, but he nonetheless accept that he should  
7 have disclosed the relationship even if he had that  
8 belief.

9 However, apart from the omission of not detailing  
10 the fact that the person behind it was a friend of his,  
11 it is our submission that the process was not  
12 circumvented by Honourable Hall even though the proposal  
13 was not put to tender. Why do we say this? We say this  
14 because there are justifiable reasons for  
15 the Deputy Premier as minister of health at the time to  
16 seek to persuade the Cabinet in favour of  
17 Southern Health.

18 (2.45 pm)

19 There was a suggestion that Southern Health Network  
20 was incorporated weeks, or I think they said days before  
21 my client made a submission to Parliament. But that is  
22 not exactly true. In my written submissions --  
23 additional submissions, that issue that I submitted,  
24 I think, yesterday we would find that there was  
25 an entity known as Quikcare which is a branch of the

1 insurance company at Southern that Mr Howell owned.  
2 What was decided was to create Southern Health Network  
3 to deal specifically with the issues in Turks & Caicos  
4 and that Quick Care continue with those medical issues  
5 in Cayman Islands.

6 There are strong reasons -- and yes, he maybe should  
7 have declared -- that support our arguments that this  
8 was a decision not based on favour, not based on any  
9 hope of benefit to my client but based solely, primarily  
10 on the fact it was the best deal for the Turks & Caicos  
11 Islands.

12 There is also evidence to show that this was not  
13 something that just came out of the air, he just plucked  
14 it out at the last minute. What I have submitted to the  
15 Commission, additional documents I submitted to the  
16 Commission shows that there were meetings held in the  
17 Cayman Islands by the medical team who were tasked to  
18 make the selection.

19 SIR ROBIN AULD: Mr Smith, I only say this your own  
20 interests, you have an hour allotted to you. At the  
21 rate you are going, you are going to be three hours  
22 plus.

23 MR SMITH: I will move on very quickly.

24 SIR ROBIN AULD: You have got it very fully set out in your  
25 skeleton which is excellent. So you might be able to

1 move a little faster in order to get as much as you can

2 in in the time allotted.

3 MR SMITH: Very well.

4 I would like to run through the reasons why

5 Southern Network was granted. I think it needs to be

6 said.

7 There was a trip to Cayman with members of the

8 health team. The reinsurance element that my client

9 testified to was absent in the other proposals and was

10 present here. There was savings on the costs of

11 Medevacs. The fact that Southern Health Network

12 guaranteed upfront payments which -- especially as

13 economic times that TCI was going through, was

14 important. They agreed to monitor patients in Miami and

15 the hospitals that were in the SHN were significantly

16 less expensive than those in use at the time.

17 I move on by saying that there is no evidence to

18 show that he benefits from this deal. There is no

19 evidence to show that it was corrupt and while

20 the criticism is correct and somewhat earned in

21 a non-disclosure of the relationship, there was once

22 again nothing showing corruption.

23 On this issue we invite the Commission to find as

24 a matter of fact that while there was a certain

25 disregard for the process, the evidence does not suggest

1 that there was any benefit to him and that there was any  
2 cogent -- and there was cogent reasons to support  
3 the position he took. I move briefly to the next point,  
4 which is his connection with the  
5 Windsor Investment Group.

6 Mr Chal Misick testified that my client was a 10  
7 per cent owner in this group. He indicated that he paid  
8 \$40,000 for this investment. He was not aware of any  
9 company being formed. If the Commission examines  
10 the papers that supports the company records, it shows  
11 Chal Misick was the sole owner of that. There was no  
12 dividends paid to my client. He was not a partner in  
13 negotiations for the rental, in the negotiations for  
14 the construction. He asked about his money once he saw  
15 the casino was going up, and he was told: we will take  
16 care of it. That is as far as I can take that.

17 The other matter in relation to my client is that he  
18 wrote a letter and great moment was made of it, when he  
19 wrote a letter to the -- I think that letter went to the  
20 Permanent Secretary of lands, requesting that certain  
21 parcels be allotted to certain individuals. The point  
22 I want to make on this was there was no Crown land  
23 policy that prohibited that conduct. Not only was this  
24 action not illegal, but the request that he made did not  
25 result in any persons on the list cutting in front of

1 any other applicants.

2 SIR ROBIN AULD: Do we know that?

3 MR SMITH: Yes. I posed those questions both to

4 Mr Hanchell --

5 SIR ROBIN AULD: They asserted it, of course. We could not

6 have any audit, I suppose, in the time to show that, as

7 to what length the lists were of disappointed applicants

8 hanging around at the time. That was undoubtedly

9 the evidence given in response from a general question

10 by you and by way of an general answer.

11 MR SMITH: The reason why I say this --

12 SIR ROBIN AULD: I have to find a negative. It is

13 a slightly insecure basis.

14 MR SMITH: If you are going to find a negative, the negative

15 that could be found, and we accept this, because this

16 was a new subdivision, it is possible that there

17 wouldn't be anybody in line because it is possible

18 people weren't aware of that. We understand that.

19 In fact all the persons who applied were qualified.

20 I repeat, no person was deprived. They didn't receive a

21 benefit from this. I think the fact he wrote that

22 letter, the highest you could take it in my submission

23 is he expedited the process, and that is as far as they

24 could go with it. There is nothing corrupt about it.

25 On the issue of scholarships, the same holds true.



1 It is important to know that at the point in time when  
2 the Deputy Premier and similarly Mrs Boyce and other  
3 ministers made what I would call the minister's awards  
4 for scholarships, as separate and apart from the awards  
5 going through the Committee, there was no scholarship  
6 policy which says scholarships can only be awarded  
7 through the education advisory board. There was nothing  
8 illegal about that. There was nothing prohibits  
9 ministers from awarding scholarships.

10 The mere fact that the PNP, when they came to power,  
11 decided to award scholarships through two routes, one  
12 through the board and one through the ministers, there  
13 was nothing wrong with that. Maybe the system could  
14 have been better monitored. Maybe there was some  
15 sloppiness in the way of monitoring the system but there  
16 was nothing wrong with the way it was done.

17 I think the question that can be asked then is what  
18 was the criteria, if the ministers could just award  
19 scholarships and the election board and the education  
20 board could do the same, what is the criteria?

21 It seems to me that the criteria at that particular  
22 time was that you are a Turks & Caicos Islander and you  
23 are accepted to a tertiary institution.

24 As you can recall, the Commission posed a specific  
25 question to the Honourable Boyce to ask her whether

1 there was a financial threshold that needs to be  
2 satisfied before a scholarship was awarded. She says  
3 no. Given the fact that there was no financial  
4 threshold, given the fact that there was no legislation  
5 limiting the award of scholarships solely to the  
6 education advisory board, there was nothing improper,  
7 nothing corrupt, nothing dishonest in the way it was  
8 done.

9 I say this also too. One of the arguments, I think,  
10 or the rumours there that the scholarships were awarded  
11 on a partisan basis. But there was no evidence that  
12 people or students or prospective students from both  
13 political parties were not awarded. There is no  
14 evidence before this Tribunal that I have seen where  
15 an individual says I am a PDM and I applied for  
16 a scholarship and I was not given a scholarship. On  
17 that basis, I do not think there is anything that can be  
18 said about it being illegal, corrupt or seriously  
19 dishonest.

20 SIR ROBIN AULD: Presumably there was a fixed budget for  
21 the award of scholarships each year.

22 MR SMITH: Yes.

23 SIR ROBIN AULD: There was a limited sum available. Do we  
24 know what pressure there was on the limit or the budget  
25 limit?

1 MR SMITH: I don't know what the sum is and I don't know  
2 what the pressure is, but I could say to the Commission  
3 that even if the award of multiple scholarships resulted  
4 in a situation where they went over the budget, it was  
5 a policy that the government agreed on and it was  
6 something that the government thinks they should really  
7 overspend on. They made a definitive decision that we  
8 need to educate our people and if we are going to  
9 overspend, we should overspend here.

10 In closing in relation to Mr Hall, I am trying to  
11 move as quickly as possible, in relation to the loans  
12 that he made, they were all above board, all with  
13 reputable financial institutions, all been serviced and  
14 all the evidence is there to justify that and to  
15 document that.

16 Similarly to his sources of income, he was very  
17 forthright to the Commission. He brought his bank  
18 accounts in. Not only did he bring his bank accounts  
19 in, he broke down each deposit, filled in what Mr Milne  
20 called the unexplained sums and was able to give  
21 a description for the most part of all the deposits and  
22 credits in all this account.

23 I think he testified in a forthright manner and he  
24 provided the Commission with recommendations. He  
25 welcomed the Commission and made certain recommendations

1 in relation to campaign financing, how Crown land should  
2 be dealt with, disclosures and other matters. Yes, he  
3 made some mistakes in adding the accounts. He certainly  
4 is not perfect, but he also certainly is not corrupt or  
5 dishonest. Unless there are any questions that the  
6 Commission has in relation to Mr Hall, I can move on to  
7 my other clients.

8 SIR ROBIN AULD: Yes, you are going to move on to Lillian  
9 Boyce now, are you?

10 MR SMITH: Yes.

11 SIR ROBIN AULD: Thank you. I am going to have to stop you  
12 fairly soon but keep going until I do.

13 MR SMITH: The three main issues in relation to Mrs Boyce:  
14 the first is in relation to the land deal which I dealt  
15 with in relation to my client Mr Hall. The situation  
16 there is similar to Mr Hall's. It is almost a mirror  
17 image. Her brother came into some money. Mr Hall's  
18 brother came into some money. In this instance she, as  
19 the matriarch of the family, took possession of the  
20 money. She explained to the court how that money was  
21 spent. \$600,000 of that money is still there in a term  
22 deposit to secure a loan. She made some renovations to  
23 her mother's house, and even though there was what I  
24 would describe as an unsanitary attempt to introduce  
25 some photographs to show that, well, she didn't really

1 fix up her mother's house, because here is her mother's  
2 house, prim and proper, that photograph is actually  
3 evidence that she did some refurbishing to her mother's  
4 house.

5 The photograph was undated. It is pretty recent --

6 SIR ROBIN AULD: I am not sure it's too important what she  
7 did with it. It is how she got it and how the balance  
8 was treated of in relation to the Premier.

9 MR SMITH: I repeat the arguments in relation to -- that  
10 I made in relation to Mr Hall. I don't think there is  
11 any dispute as to how she got it. Her brother came into  
12 the money and as she indicated, she was the matriarch of  
13 the family, and she used some of that money in a sense  
14 to secure a loan.

15 SIR ROBIN AULD: It is the same -- it may not be a problem  
16 but it is the same feature that arose in the case of the  
17 Premier. The coincidence of the four payments alongside  
18 the land transaction, all being channelled back through  
19 these four loans of 1 million to the Premier. That is  
20 the real thing there that has to be dealt with, isn't  
21 it?

22 MR SMITH: We do accept that the coincidence of those  
23 transactions and the way they were dealt with can lead  
24 to the Commission to some concern. I think in order to  
25 lead the Commission to a conclusion that was kickbacks

1 or some other unsavoury way it was dealt with, I think  
2 there has to be some additional evidence, and there is  
3 no such evidence to move it from the fact that it was  
4 a loan.

5 I can move on to the other issue. It is in relation  
6 to the scholarships.

7 The arguments that I made in relation to  
8 Honourable Hall holds true in relation to  
9 the scholarships, in relation to Mrs Boyce. The only  
10 difference is that it was her ministry at the particular  
11 time that was handling the scholarships. Again,  
12 the argument holds true, there was no scholarship  
13 policy. There is no prohibition on scholarships being  
14 awarded in only one method. As a matter of fact there  
15 is no legislation that mandated that the scholarship  
16 only had to be handled by the education advisory board.

17 We say that, yes, it could have been monitored  
18 a little better, yes, there was some sloppiness in  
19 the way it was dealt with, but it does not rise to the  
20 level of corruption or illegality.

21 Why do we say this? No financial threshold was  
22 breached for the awarding of the scholarships;  
23 the awards were non-partisan; there was no financial  
24 benefit to Honourable Boyce or to any members of  
25 Parliament for awarding the scholarships and there is

1 nothing to show that she received any kickbacks from any  
2 universities, individuals or any other educational  
3 institutions for the awarding of the scholarships; and  
4 also there is nothing to show in the evidence that  
5 the minister steered students to a particular university  
6 in return for any kind of kickbacks.

7 The final issue in relation to the Honourable Boyce  
8 is in relation to a letter that she was shown where she  
9 wrote to the -- that was written on her behalf, she  
10 says, and with her consent in relation to the removing  
11 some individuals from what she called low land area to  
12 another area, and I think it was another situation of  
13 some recommendation of lands being awarded. I again  
14 repeat the arguments I made in relation to  
15 Honourable Boyce and the same holds true.

16 There is one issue that I need to raise in relation  
17 to Honourable Boyce. That is in relation to her loans.  
18 There is a perception in the community that she used  
19 the proceeds from her brother's deal to refurbish her  
20 house and to refurbish her business. That is not true.  
21 I remind the Commission that there is evidence in the  
22 record of her taking out two loans, one for \$1 million  
23 to deal with her car and renovation at the Airport Inn  
24 and another one for somewhere in the proximity of  
25 \$700,000 for a home at Chalk Sound. Again there is

1 nothing here before this Tribunal that would cause one  
2 to say even -- nothing coming in smelling distance of  
3 her being corrupt, dishonest, or doing anything illegal.

4 (3.00 pm)

5 I would like finally to move to Mr Gardiner, Don-Hue  
6 Gardiner.

7 When I search for issues that relates to him, I can  
8 only come up with two issues that I think should concern  
9 the Commission, or the Commission may be concerned with;  
10 those in relation to his employment at Turks Limited and  
11 Dellis Cay. Those are all above-board employment. He  
12 had a contract for both jobs. He was paid for both  
13 jobs. He worked as in-house counsel, and there is  
14 nothing to indicate that he received those jobs as  
15 a result of doing favours or with the intention that he  
16 does some favours for any other individuals.

17 The final issue which I think I should speak to in  
18 relation to Mr Gardiner is the Caicos Group issue.

19 Admittedly that testimony never came out as fluid as  
20 it was supposed to be but essentially what occurred was  
21 Mr Gardiner had a shelf company; he was later approached  
22 by Mr Sandy Lightbourne who informed him that he was in  
23 negotiation with Mr Ellis in relation to the prospective  
24 development. He was told that the land involved would  
25 be too much for all the Belongers, so all the Belongers



1 were encouraged to become involved. They took his  
2 group, Caicos Group company off the shelf, and he  
3 utilised it for that joint venture deal.

4 Then there was a hitch in a sense that the company  
5 that was financing the project needed each individual to  
6 come up with some money. Not having the money,  
7 the agreement was made that Turks -- that Caicos Resort  
8 would buy a portion of the interest in Caicos Group and  
9 the question was posed multiple times to Mr Gardiner as  
10 to what money was paid for. Their simple answer is  
11 this: what was sold by Mr Gardiner was his interests in  
12 the joint venture which in practical terms was  
13 a contribution he and other Belongers would have brought  
14 to the deal which was in fact the land. There was  
15 nothing illegal about this. Nothing corrupt about this.

16 Now, there was some issue made of the fact as to  
17 how, given its current salary, he was able to make  
18 credit card payments of about \$4,000 per month and he  
19 answered that. He said some of those payments were made  
20 as a result of a loan he had for the construction of his  
21 house. Some of his purchases he indicated were  
22 purchases in relation to construction of his house and  
23 he used the loan proceeds to make those payments.

24 He also indicated that some of the other portions of  
25 money that he received from his interest in

1 Caicos Group, which amounted to \$400,000 over two and  
2 a half years, he used that to satisfy his credit cards.  
3 I submit there is nothing Mr Gardiner testified to that  
4 shows any hint of corruption or dishonesty.

5 SIR ROBIN AULD: I think you should know that the Commission  
6 has not had time to investigate the accounts and other  
7 material that he produced late in the day in the course  
8 of the Inquiry. We simply haven't had time to analyse  
9 them but we shall. So there may be matters there which  
10 we will find which haven't been possible to canvass in  
11 the oral hearings. I don't know whether you went  
12 through them all thoroughly before you produced them to  
13 the Commission. I think it was last week. We have not.

14 MR SMITH: We are confident that it is not going to show  
15 anything unsavoury and if the Commission is of  
16 a different view, we would invite the Commission to give  
17 us an opportunity --

18 SIR ROBIN AULD: That may not arise now but we shall do our  
19 best. We have a lot to do in a very short time now and  
20 we didn't have the opportunity to go through them  
21 thoroughly months before when they could have been made  
22 available to Mr Don-Hue Gardiner's advantage.

23 But we will go through them and if we find matters  
24 to his advantage we shall say so, and if we find not,  
25 I am afraid we shall have to say so to the extent that

1 it is relevant.

2 MR SMITH: Very well. The only other reason in relation to

3 Mr Gardiner is for some reason, and there is a reason

4 for that, he passed some funds not through his client

5 account but through his personal account.

6 I mean, it is a touchy area, but he had permission

7 from his clients to do that.

8 SIR ROBIN AULD: There is evidence about that, is there?

9 MR SMITH: There is evidence about that.

10 SIR ROBIN AULD: What was the evidence, just remind me?

11 MR SMITH: The evidence was that --

12 SIR ROBIN AULD: From whom?

13 MR SMITH: The evidence from Mr Gardiner --

14 SIR ROBIN AULD: His assertions in evidence, you mean?

15 MR SMITH: Yes. That these persons wanted a quick

16 turnaround of the money, so they gave him instructions

17 to put it in his FCI Bank account and give them back the

18 monies. Suffice it to say --

19 SIR ROBIN AULD: Is there anything in the papers that you

20 have produced that would support that or bear on it?

21 MR SMITH: There is nothing in the papers that I could

22 produce to support that other than --

23 SIR ROBIN AULD: I am not asking you to produce any more,

24 but I am just enquiring whether there is anything in the

25 mass of papers that we have now got to look at that

1 might help in the matter.

2 MR SMITH: No. The only thing I could produce is statements

3 from these particular persons, if the Commission

4 requires that. Suffice to say that no individual has

5 claimed that they have been deprived of -- no clients

6 have come forward and made reports of not getting any

7 funds that they were supposed to get.

8 SIR ROBIN AULD: No complaint by clients?

9 MR SMITH: No. Finally, if the Commission allows me to wrap

10 up, I won't be more than five minutes.

11 We do admit that some errors were made by all three

12 clients and some criticism is deserved in relation to

13 declarations. But there is nothing to show any

14 corruption, any serious dishonesty and any illegality.

15 We do understand that some recommendations are needed as

16 indicated by the Deputy Premier, especially in relation

17 to issues of the disclosure. We do think that there may

18 be some -- a need for some teeth in that legislation.

19 As the way it stands now, it has been monitored by

20 the Registrar and --

21 SIR ROBIN AULD: Of course there are provisions in

22 the Integrity Commission Ordinance that deals with

23 returns, are there not?

24 MR SMITH: Yes. My way of reading it, it seems to be that

25 the moving party would have to be the Registrar.

1 SIR ROBIN AULD: I think the Commission will take over that  
2 role now, won't they, if I read it aright, under the new  
3 law when it comes into effect, the Registrar will  
4 disappear. I notice the ordinance -- I do not think it  
5 expressly abolishes that provision in  
6 the registration -- returns act ordinance but it seems  
7 to me that will disappear.

8 MR SMITH: Yes.

9 SIR ROBIN AULD: There are also provisions in the  
10 constitution in sections 47 and 48 which will bear upon  
11 it too. So there is other, or will be other statutory  
12 provisions, but are they enough really is what I was  
13 interested? Will they do the job?

14 MR SMITH: My view, and it is our view that I think there  
15 should be something in the  
16 Registration of Interests Ordinance itself because that  
17 is the ordinance that is "being breached".

18 SIR ROBIN AULD: This is all part of the history, but as to  
19 the future.

20 MR SMITH: Yes, I understand.

21 We would ask you to adopt some of the  
22 recommendations Mr Hall directed the Commission to. In  
23 conclusion I remind the Commission that this is not  
24 accusatory proceedings. No one is on trial here. It is  
25 just an investigation and I submit that this factor, and

1 I am sure it is in the forefront of the Commission's  
2 mind, but I just remind the Commission one more time to  
3 keep that factor, that this is an investigation and  
4 an investigation only, in the forefront of your mind  
5 when you are writing your report and making  
6 recommendations. I am asking the Commission also to  
7 take notice that the advent, arrival and conduct of this  
8 Inquiry has engendered, nourished and festered a great  
9 political divide in this country.

10 It has created a vast chasm that only be bridged or  
11 tempered by an objective and dispassionate report.  
12 A report that should aim to make practical, and  
13 I submit, even-handed recommendations. We submit if  
14 this is done, it will go miles towards renewing  
15 the people's faith in both the political and judicial  
16 system and in return it will generate the type of  
17 healing that is necessary for this country to succeed.

18 Those are my submissions.

19 SIR ROBIN AULD: Mr Smith, thank you very much. Before you  
20 sit down, do you have anything to say on the point that  
21 Mr Fitzgerald raised, and we canvassed a little in his  
22 submissions this morning, about the course  
23 the Commission should take if it were minded to  
24 recommend investigation further by the police or another  
25 enforcement authority, that there could be no fair trial

1 by judge and jury in this country because of the  
2 extensive adverse publicity that has been generated.

3 What do you say about his submissions on that and  
4 the point that I raised with him?

5 MR SMITH: I adopt Mr Fitzgerald's submission in total.

6 I think he was correct in directing the Commission to  
7 the views expressed by the prior Commissioner when faced  
8 with a somewhat similar situation.

9 I have not had the opportunity of reading some of  
10 the cases and the authorities cited by Mr Fitzgerald,  
11 but I think the air and -- I don't want to use the word  
12 but I have to use it -- the stench that this Commission  
13 has created has pervaded this community to the extent  
14 that it will not be easily washed off and in that sense  
15 it is almost impossible for anyone to get a fair trial.

16 I do appreciate what the Commission is saying, that  
17 maybe that is an issue that should be decided by a trial  
18 court if in fact it gets that far. But I think

19 the Commission does have the authority and  
20 the discretion to prevent it from getting that far and

21 I adopt Mr Fitzgerald's argument whole-heartedly.

22 SIR ROBIN AULD: In a way, the more condemnatory I could be

23 about any person in this Inquiry, the more likely he is

24 to evade or avoid prosecution?

25 MR SMITH: That's the battle --

1 SIR ROBIN AULD: On that issue.

2 MR SMITH: That is the dilemma. I appreciate it.

3 SIR ROBIN AULD: Have you an answer to it?

4 MR SMITH: My answer is simple: that a fair trial is

5 impossible in these circumstances.

6 SIR ROBIN AULD: A fair trial by judge and jury.

7 MR SMITH: Yes. It is a person's right to have a trial by

8 a judge and jury.

9 SIR ROBIN AULD: Thank you very much, Mr Smith, and thank

10 you also for your very helpful skeleton argument and

11 the parts that I hurried you through towards the end,

12 I shall read with care and it has been very helpful. We

13 will rise now for a short break.

14 (3.12 pm)

15 (A short break)

16 (3.21 pm)

17 Closing submissions by MR RIGBY

18 SIR ROBIN AULD: Mr Rigby, you are now to make a submission

19 on behalf of Mr Chalmers Misick.

20 MR RIGBY: That is correct, sir.

21 SIR ROBIN AULD: Have you submitted any speaking notes?

22 There is no criticism in the question; I just need to

23 know, that is all.

24 MR RIGBY: I have not, but they are prepared.

25 SIR ROBIN AULD: It doesn't matter. I am sure they are.



1 MR RIGBY: I had some challenges this morning.

2 SIR ROBIN AULD: If you are simply going to make

3 submissions, then I shall take more care in the notes

4 I make.

5 MR RIGBY: I will certainly undertake to provide all of my

6 notes.

7 SIR ROBIN AULD: That is fine. We will have a transcript.

8 MR RIGBY: Thank you very much. Let me too at the outset

9 add my words of gratitude to the Commission, to

10 the staff and the stenographers for the work they have

11 done over these past four weeks or so. At the outset,

12 let me also refer the Commission, as the previous

13 attorneys have done so, to its terms of reference and in

14 respect of Mr Misick, only for the purpose of the

15 record, I indicate that Mr Misick is not a present or

16 past elected member of the House of Assembly.

17 But in compliance with the summons served upon him

18 on 5th January of this year, he attended before

19 the Commission and we would submit that he has made full

20 and frank disclosure of all of the issues asked by this

21 Commission.

22 Bearing in mind that he is not a past or present

23 member of the Honourable House, I would submit that

24 the ambit of this Inquiry in respect of Mr Misick cannot

25 go into matters which would fall ordinarily within

1 the confines of his attorney/client engagement and also  
2 cannot go into areas which address the professional  
3 affairs that he has on behalf of his clients.

4 The Commission is bound to stick to the four corners  
5 of its jurisdiction as set out in its terms of  
6 reference, and if it goes outside of those terms of  
7 reference, we would submit that it will be on a frolic  
8 of its own and that phrase I have copied from the case  
9 of Douglas v Pindling, I think the majority --

10 SIR ROBIN AULD: Douglas and what?

11 MR RIGBY: Douglas v Pindling.

12 SIR ROBIN AULD: That concerns your own jurisdiction,  
13 doesn't it?

14 MR RIGBY: Yes it does.

15 There were four areas which Mr Misick's testimony  
16 settled on. Those areas are, firstly, political  
17 contributions received on behalf of the Premier.

18 Secondly, the nature of the legal matters undertaken  
19 by his firm on behalf of the Premier inclusive of  
20 the sale of the property in North Caicos, the 6 million  
21 loan from J&T Banka and the role of  
22 Business Ventures Limited in respect of that loan.

23 Thirdly, the lendings advanced to the Premier by  
24 Mr Misick which totalled \$455,000.

25 And finally, fourthly, Mr Misick's professional

1 dealings with the Salt Cay Golf Club Limited,  
2 Caicos Platinum, Oceanic Development Limited and the  
3 Joe Grant's Cay development.  
4 I will deal with those issues as they appear.  
5 SIR ROBIN AULD: You are turning over a lot of pages there.  
6 MR RIGBY: I am.  
7 SIR ROBIN AULD: Am I going to miss some of your golden  
8 words?  
9 MR RIGBY: I am going to send this to you by e-mail. I am  
10 trying to keep within my --  
11 SIR ROBIN AULD: Don't worry about timing for the moment.  
12 I am just anxious that you have an opportunity to put to  
13 the Commission all that you want to, whether in oral or  
14 written form. Yes, carry on. But don't skip things  
15 because -- and then miss something important.  
16 MR RIGBY: With respect to the terms of reference, if  
17 I could just be helpful on this point and I think this  
18 is the dicta coming out of Douglas v Pindling again  
19 which is 1996 AC 890. Lord Keith dealt with  
20 the question as to the ambit of the Inquiry, and how far  
21 the Commission can proceed in its efforts to gather  
22 information. Quoting from Lord Keith's decision at  
23 page 904, he provides that: Although the Commission in  
24 the course of its investigation would at least be able  
25 to take valuable steps to identify the persons giving

1 information on oath or the source of that information,  
2 if they had direct personal knowledge of the matters in  
3 question, that it did not mean of course that  
4 the Commission can go off on a frolic of its own.

5 "However, I think a court, if it has power to do so,  
6 should be very slow to restrain the Commission from  
7 pursuing a particular line of questioning and should not  
8 do so unless it is satisfied in effect that  
9 the Commission is going off on a frolic of its own. If  
10 there is a real as distinct from a fanciful possibility  
11 that a line of questioning may provide information  
12 directly or even indirectly relevant to the matters  
13 which the Commission is required to investigate under  
14 its letters ... such a line of questioning should in my  
15 opinion be treated as relevant to the Inquiry."

16 We would submit that that is the test that this  
17 Commission must apply in respect to the evidence of  
18 Mr Misick, Chal Misick that is.

19 SIR ROBIN AULD: Now, where do you submit that  
20 the Commission is at risk of doing so or having done so?

21 MR RIGBY: Going on a frolic of its own?

22 SIR ROBIN AULD: Yes, have I been on a frolic of my own?

23 MR RIGBY: No, we say --

24 SIR ROBIN AULD: Where am I likely at risk of doing so?

25 MR RIGBY: We say that in respect of any adverse findings

1 which relate to the engagement by Mr Misick under his  
2 retainer arrangement with his clients, or in respect to  
3 the operations of his firm, ie the suspense account,  
4 Windsor West, or the internal accounting operations of  
5 his firm, that those matters, with respect, would be  
6 outside of the purview of the Inquiry, and therefore if  
7 there is any adverse findings by this Commission under  
8 those two limbs, we would submit that the Commission  
9 would be outside of its jurisdiction and be on a frolic  
10 of its own.

11 SIR ROBIN AULD: Even if those matters did not come within  
12 the realm of legal professional privilege, properly so  
13 described?

14 MR RIGBY: The only matter which we believe comes outside of  
15 that area would be the question of the political  
16 donations. I intend to address that fairly extensively.

17 SIR ROBIN AULD: So the only matter the Commission is  
18 entitled to look at are treatment of political  
19 donations; is that what you are saying?

20 MR RIGBY: That is exactly what I am saying.

21 SIR ROBIN AULD: The Commission shouldn't really have  
22 allowed Mr Milne to ask half the questions he asked of  
23 Mr Chalmers Misick; is that what you are saying?

24 MR RIGBY: Only those questions or those issues which flow  
25 from his engagement with his clients. In this context

1 the Premier along with his wife, Lisa-Raye McCoy Misick,  
2 waive their privilege and so the ambit of the engagement  
3 was before this Commission. And we would submit that  
4 there has been no controversial issues as far as we  
5 could tell that came out of the record which relate to  
6 the substance of that engagement or to the legal work  
7 undertaken by Mr Misick at the material time on behalf  
8 of those two clients.

9 (3.30 pm)

10 SIR ROBIN AULD: So no problem about going on a frolic of my  
11 own in relation to the Premier or Lisa-Raye  
12 McCoy Misick, is that right?

13 MR RIGBY: Other than within the context of that engagement.  
14 So for instance --

15 SIR ROBIN AULD: I need to know where you say I am at risk.

16 MR RIGBY: Let me put it this way: the North Caicos  
17 property, the sale of the North Caicos property by  
18 Solana Holdings Limited; the issue of the \$6 million  
19 loan from J&T Banka; the issue of the Premier's  
20 interests in Windsor Investment Group Limited, as well  
21 as the use or the work undertaken by Mr Misick in  
22 the incorporation of Arch Property Limited,  
23 MIG Investments --

24 SIR ROBIN AULD: Is all this in or out?

25 MR RIGBY: All of these things will fall within the nature

1 of the engagement and so they are in by virtue of the  
2 fact that both the Premier and Lisa-Raye McCoy Misick  
3 waived their privilege.

4 SIR ROBIN AULD: So I need not worry about evidence taken  
5 from him in respect of those two clients.

6 MR RIGBY: But only in a very narrow scope, we are  
7 submitting.

8 SIR ROBIN AULD: They didn't narrow it in that way.

9 MR RIGBY: We would submit that within the terms of  
10 reference of the Commission, the narrow scope must only  
11 relate to issues which touch on questions of corruption  
12 or other serious dishonesty in relation to those  
13 particular matters; that there could be no adverse  
14 findings in respect of Mr Misick's performance of his  
15 engagement.

16 SIR ROBIN AULD: I see.

17 MR RIGBY: On behalf of those clients, notwithstanding  
18 the fact that they waived their privilege, because any  
19 adverse finding in respect of Mr Misick's discharge of  
20 his professional obligation, we would respectfully  
21 submit falls outside of the ambit of the Inquiry and  
22 therefore in that instance the Commission will be going  
23 on a frolic of its own.

24 SIR ROBIN AULD: I suppose we ought to say corruption or  
25 other serious dishonesty, oughtn't we?

1 MR RIGBY: That is correct, yes.

2 SIR ROBIN AULD: But not as to the performance by him as to  
3 his professional obligations?

4 MR RIGBY: That is correct.

5 SIR ROBIN AULD: Now that is nice and simple. Are you  
6 suggesting that Mr Milne during the course of his  
7 examination went into a forbidden field by asking him  
8 questions about the performance of his professional  
9 duties?

10 MR RIGBY: There may have been one or two occasions, but  
11 I thought just at the outset, I ought to make that point  
12 very clear for the purpose of the Commission.

13 SIR ROBIN AULD: If you had any serious objection to it,  
14 the time to take it was when Mr Milne was asking  
15 the questions.

16 MR RIGBY: That is correct. But for the purpose of any  
17 adverse findings by the Commission, we will submit that  
18 it is obviously important to make it at this point, so  
19 that to be of assistance to the Commissioner that we  
20 raise the objection at this stage --

21 SIR ROBIN AULD: I am grateful to you. I want to keep  
22 obviously within my terms of reference.

23 What about this, given the point you have just made,  
24 where it might be considered that a professional man,  
25 an attorney, might not conform with his professional



1 duties because he may be dishonest, corrupt or  
2 otherwise?

3 MR RIGBY: In respect of Mr Misick, we would submit that  
4 there is no evidence.

5 SIR ROBIN AULD: It is not a question of whether there is  
6 any evidence; it is a question of whether the Commission  
7 is entitled to examine failure to comply with  
8 professional duties where it might be a route to  
9 identifying corruption or other serious dishonesty.

10 MR RIGBY: We would submit it does not fall within the terms  
11 of reference.

12 SIR ROBIN AULD: Even if it might do that, if it is  
13 a possible sign of dishonesty?

14 MR RIGBY: The only way, we would submit, that it can fall  
15 within the terms of reference is that there must be  
16 a clear factual nexus to either an elected past or  
17 present Member of the House of Assembly.

18 SIR ROBIN AULD: That is a different point altogether. That  
19 is a different point.

20 MR RIGBY: If within himself as a citizen, using his  
21 professional retainer or his professional services for  
22 the purpose of funding corruption or dishonest  
23 practices, we would say that that falls under  
24 the purview of the Bar Association of the TCI, and the  
25 Bar Association or the Bar Council would have to make

1 certain recommendations in respect to any disciplinarian

2 regime --

3 SIR ROBIN AULD: So to exclude the jurisdiction of the

4 Commission to inquire into conduct, one of the signs of

5 dishonesty of which may be that he took advantage of his

6 professional position and in doing so abused his

7 professional duties?

8 MR RIGBY: We would submit that that falls outside of

9 the four corners of the terms of reference of the

10 Commission.

11 SIR ROBIN AULD: I have your submissions on that and I am

12 glad you have alerted me to the issue.

13 MR RIGBY: If I can now just deal with the testimony of

14 Mr Misick. In respect of the J&T Banka loan and

15 the pledge of the shares of Business Ventures Limited,

16 I certainly endorse the earlier submissions of

17 Mr Fitzgerald on behalf of the Premier, in the context

18 that there is no evidence with respect to the loan was

19 a sham or that the loan was dressed up as a bribe or

20 the corrupt payment. If that is true, then it must

21 follow that the pledge of the shares to BVL for

22 the purpose of that loan is too legitimate and is not

23 a sham but rather is an arm's length commercial

24 transaction between the Premier, the BVL and the bank.

25 We further submit that the fact that J&T Banka

1 requested collateral which it was familiar with is  
2 additional evidence to confirm the legitimacy of  
3 the loan; and that Mr Misick's evidence is that he took  
4 great care in reviewing the loan documentation and the  
5 mortgage over the shares to satisfy himself that he was  
6 protecting his interests and that of BVL.

7 The Commission could find that evidence or that  
8 reference to his evidence in the transcripts  
9 of 27th January 2009 between pages 78 and 84.

10 We would also submit that in respect of the decision  
11 of Mr Misick to allow the shares of BVL to be pledged as  
12 collateral for the J&T Banka loan, does not of itself  
13 demonstrate or go to the level of either a corrupt act  
14 or a serious dishonest act.

15 SIR ROBIN AULD: You say does not of itself; we are not  
16 considering matters of themselves; we are considering  
17 them in their context.

18 MR RIGBY: Yes, I am going to put them in their context.

19 SIR ROBIN AULD: This is the second matter in this context?

20 MR RIGBY: Yes. Even when one looks at the context in  
21 respect of Mr Misick's involvement in the  
22 Salt Cay Golf Club Limited, the chronology of the events  
23 clearly show and demonstrate that the involvement by  
24 Mr Misick in that as a shareholder or as the holder of  
25 50 shares, 50 of the issue shares of that company, arose

1 in circumstances far beyond the time at which  
2 the Executive Council of TCI decided to approve  
3 the lease of the land to the Salt Cay Golf Club Limited.

4 In fact, the evidence is clear before this  
5 Commission that Mr Misick's shareholding in that company  
6 did not arise until December 2006, some four months  
7 after the decision by the Executive Council on or  
8 about 2nd August 2006.

9 SIR ROBIN AULD: Why should that time gap be critical?

10 MR RIGBY: That is critical in this context, that it  
11 confirms that the -- the evidence before this Commission  
12 is that the Premier had no knowledge of his brother,  
13 Mr Misick's shares in BVL at the time that the decision  
14 was made.

15 SIR ROBIN AULD: What evidence is there?

16 MR RIGBY: The evidence is the testimony of both the Premier  
17 and Mr Chal Misick.

18 SIR ROBIN AULD: Any other evidence?

19 MR RIGBY: There is no other evidence, but in terms of the  
20 timeline, one sees that the letter by Mr Hoffman was  
21 written on 1st August 2006. It went before  
22 the Executive Council on 2nd August 2006. The company  
23 was incorporated around 14th or 15th August 2006, some  
24 12, 13 days later. Mr Misick's shares in  
25 Salt Cay Golf Club Limited through BVL had not been

1 registered or sanctioned or approved by the parties

2 until 15th December 2006.

3 So at the material time, which we would submit would  
4 be around 1st or 2nd August 2006, there is no indication  
5 and no evidence before this Commission which shows  
6 without any doubt that the Premier had knowledge that  
7 his brother Chal Misick was the holder of the shares in  
8 Salt Cay Golf Club Limited, and further that the Premier  
9 would have used his position by expediting the request  
10 for the use of the land for the golf club to materially  
11 benefit his brother.

12 If those facts are accepted by the Commission, we  
13 would submit that it therefore leads to a reasonable  
14 conclusion that at the material time that there could be  
15 no nexus between the approval being made by  
16 the Executive Council, Mr Misick's issued shareholdings  
17 in Salt Cay Golf Club Limited and his decision to agree  
18 to pledge his shares on behalf of the Premier to secure  
19 the J&T Banka loan.

20 In fact with respect to the loan, the loan was not  
21 approved or granted until April 2007. So in terms of  
22 the timeline, the chronology of events, that it begs  
23 a reasonable conclusion that there was no involvement  
24 either directly or indirectly by the Premier, that there  
25 was no pressure put on the Premier by Mr Chal Misick to

1 use his position to facilitate the expedited decision

2 for the lease of the land, Crown land to the

3 Salt Cay Golf Club Limited.

4 SIR ROBIN AULD: But the premise of that submission is that

5 Chal Misick it was, who was the person driving this, not

6 the Premier. Whereas as I understood, Chalmers Misick's

7 evidence was that he was there acting as an agent,

8 an assistant for the Premier in respect of his personal

9 funding arrangements.

10 MR RIGBY: In respect of the J&T Banka loan?

11 SIR ROBIN AULD: Yes.

12 MR RIGBY: Or are we talking in general? No, no, with

13 respect, that is not the evidence. Mr Misick's evidence

14 is that at the material time he did limited work as

15 an attorney for the development.

16 SIR ROBIN AULD: I think you are missing the point.

17 The point I am putting to you is that it was not

18 Chal Misick who was driving these transactions and these

19 financial arrangements on behalf of the Premier; he was

20 acting, to the extent that he was acting, as an agent

21 for the Premier.

22 MR RIGBY: No.

23 SIR ROBIN AULD: He was not the principal in all this,

24 according to him.

25 MR RIGBY: Yes, that is his evidence but he also said in the

1 context of the loan and the sale of the North Caicos  
2 properties through Solana Holdings Limited that he acted  
3 for the Premier as his attorney.

4 (3.45 pm)

5 SIR ROBIN AULD: This is not the point. We are not  
6 considering whether he was acting in one capacity or  
7 another for the Premier. You were putting to me  
8 a proposition which suggested that Chal Misick was  
9 the person who was not directing the Premier or  
10 informing him about various matters, as if he were  
11 the principal and not the agent when it is really  
12 the other way round.

13 MR RIGBY: I had to put the first position first to ensure  
14 for purpose of clarity that there is no doubt that he  
15 was not -- Chal Misick was not the driving force in the  
16 promotion of the golf club deal.

17 SIR ROBIN AULD: I understand that.

18 MR RIGBY: We would then submit that in respect of whether  
19 the Premier was the driving force, again we would submit  
20 that the evidence of the Premier, as I understand it, is  
21 that it is not unusual for his Cabinet to expedite  
22 a decision that in the totality of the development, that  
23 the use or the intended request for the golf club was an  
24 added amenity and that this was an ongoing development  
25 and therefore not a new development which had come

1 before the council and therefore had been granted  
2 approval within that short period.

3 The second point I want to move to is the sale of  
4 the North Caicos property. This is Solana Holdings. In  
5 reviewing the transcripts, we would submit that there  
6 was not much controversy with respect to this sale.  
7 The bundle of Chal Misick exhibits all of the e-mails  
8 and the option agreements and the registered interest to  
9 demonstrate that it was a legitimate purchase of 50  
10 per cent of the issue shares of Solana Holdings,  
11 the company which was the registered owner of the land,  
12 and therefore we would submit that there is no evidence  
13 before this Commission which can raise an issue that the  
14 transaction was either corrupt or was dishonest or  
15 illegal.

16 In fact, the record ought to reflect that Mr Misick  
17 acted for the Premier and that Heather Island of  
18 Misick & Stanbrook acted for the purchasers.

19 If I can now turn to the political donations.

20 SIR ROBIN AULD: Is this your third --

21 MR RIGBY: This is my third head, yes. In the account Quick  
22 report of Chalmers & Co which was disclosed to the  
23 Commission, six political donations were disclosed which  
24 the firm had received on behalf of the Premier. Those  
25 six donations were in various amounts, from \$50,000 to



1 the largest being \$500,000.

2 Counsel to the Commission confirmed that  
3 the Commission was only concerned or appeared to have  
4 been concerned with respect to the larger of the two of  
5 the donations, that being the amount of \$500,000  
6 received by the firm on 9th January 2007.

7 All of the questions in respect of the political  
8 donations related to that single donation and therefore  
9 it is that single donation which I wish to spend most of  
10 my time addressing the Commission on this afternoon.

11 The Commission will recall that the evidence at  
12 first was given in camera, and then by a ruling on about  
13 27th or 28th January the in camera transcript was made  
14 the public transcript.

15 The gravamen of the allegation appears to be that  
16 the size of the donation and the donor, Turks Limited,  
17 in some way suggests that it was a bribe or it was  
18 a corrupt payment or it was -- amounted to serious  
19 dishonesty.

20 In respect of whether it amounted to a bribe,  
21 I would at this stage also adopt the submissions of my  
22 learned senior Mr Fitzgerald. For the purpose of these  
23 submissions I wish to make just two observations.

24 The first is that it is generally recognised that in  
25 order to constitute a bribe, that there must be evidence

1 of a favour being exchanged or someone agreeing to act  
2 in their official capacity in exchange for the giving or  
3 receiving of something of value.

4 The timeline in respect to  
5 the Dellis/Joe Grant's Cay development, we would submit,  
6 confirms that the payment on 9th January 2007 by  
7 Turks Limited, could not and did not amount to a bribe,  
8 or to a corrupt, or to a dishonest person.

9 SIR ROBIN AULD: What was the delay here?

10 MR RIGBY: I beg your pardon, the delay?

11 SIR ROBIN AULD: What was the delay here? This is  
12 another time point?

13 MR RIGBY: This is also a time point. We will be relying  
14 extensively on the letter sent to the Commission dated  
15 30th January 2009 by Dr Kinay, which sets out in very  
16 clear form at page 4, from paragraphs 13 to 18, why in  
17 his view it could not amount to a bribe. Obviously he  
18 was the one directing the payment of the \$500,000 and so  
19 we would submit that his evidence has to be taken in  
20 the greater balance.

21 SIR ROBIN AULD: What about his evidence; is this a time  
22 point or not?

23 MR RIGBY: This is a time point. That one, the payment of  
24 the \$500,000 on 9th January 2007, it was made during  
25 the height of the political campaign. Again, just to

1 reiterate that there is no law or regulation in this  
2 jurisdiction which prevents anyone, a developer or any  
3 ordinary citizen, from making a political contribution  
4 or donation to a political party during the height of  
5 the election campaign. The Election Ordinance sections,  
6 68 and 69, appeared to narrow the ambit of a bribe  
7 during the course of an election campaign to whether  
8 a particular voter has been prevented from voting or  
9 have been encouraged to vote for a political  
10 organisation.

11 So --

12 SIR ROBIN AULD: You mean at that time?

13 MR RIGBY: At that time.

14 SIR ROBIN AULD: Are you saying that confines the ambit of  
15 the offence of -- general offence of corruption if  
16 an undoubtedly corrupt gift is made outside that time?

17 MR RIGBY: No, I am not suggesting that. I am saying that  
18 within the ambit of sections 68 and 69, that one has to  
19 look within those sections to see how it defines bribery  
20 during the course of the election campaign.

21 SIR ROBIN AULD: How far does that take you if  
22 an undoubtedly corrupt payment is made outside of that  
23 time?

24 MR RIGBY: In terms of the timeline, we would submit that  
25 the only reasonable conclusion that the Commission could

1 arrive at is that a payment on 9th January 2007, less  
2 than one month before the election, before the actual  
3 polling, the only reasonable conclusion is that that was  
4 paid to assist in the -- either the re-election of the  
5 PNP or the Premier.

6 SIR ROBIN AULD: Why should that be the only reasonable  
7 conclusion? If a man wants to bribe, he can do it  
8 subtly. He can do it at a time remote from the  
9 particular transaction in which he is interested. Why  
10 is that the only reasonable conclusion the Commission  
11 should come to?

12 MR RIGBY: That is the only reasonable conclusion based on  
13 the substance of Dr Kinay's letter.

14 Because when one looks at the substance of the  
15 letter, it clearly indicates that Dellis Cay or  
16 Joe Grant's Cay did not receive any preferential  
17 treatment, any favour, any advantage by the giving of  
18 that donation of \$500,000 on 9th January 2007.

19 SIR ROBIN AULD: That is a different point and I understand  
20 that one. I have already noted it. It is a submission  
21 you have already made.

22 MR RIGBY: Just to follow through, in fact his letter  
23 clearly indicates that they were perhaps given a more  
24 difficult time than they had expected with respect to  
25 the purchase of the property in June of -- I think it

1 was June 2007.

2 June 2008. They had been -- the government had  
3 indicated to the developers of Joe Grant's Cay that they  
4 ought to purchase a property for \$2 million for  
5 the hotel site and this is at paragraph 10 of Dr Kinay's  
6 letter.

7 Some five days later, the government wrote back to  
8 the developers and said that they were increasing  
9 the price by 1.2 million. So they end up paying \$3.2  
10 million for the hotel site and he makes the point that  
11 even before they had agreed a development agreement, so  
12 they were assuming an enormous risk with respect to the  
13 purchase on about 18th June 2008.

14 The development agreement had not been signed until  
15 7th November 2008. So in the scheme of that chronology,  
16 one therefore sees that the payment on 9th January 2007  
17 did not in any way favour the developers of  
18 Joe Grant's Cay. They received no benefit, they  
19 received no advantage by making the political donation,  
20 but in fact the evidence bears out that they were put to  
21 perhaps greater risk by being requested to purchase  
22 the property for the hotel site for a sum of  
23 \$3.2 million, even before they had finally negotiated  
24 the development agreement with the government.

25 The second point I want to make is that

1 the Election Ordinance at section 68, subsection 2 does  
2 not prevent the receipt of money during the election  
3 campaign for any lawful expenses incurred in good faith  
4 by a political party or by any candidate.

5 We would submit that is an important consideration  
6 that the Commission must take into account in assessing  
7 the totality of the political donations made.

8 Before I leave this point, I just want to make one  
9 intervention and that is that the terms of reference of  
10 the Commission is to essentially gather information;  
11 that this Commission does not have the jurisdiction to  
12 make any finding that the payment or donation was  
13 actually a bribe or was corrupt or was seriously  
14 dishonest.

15 SIR ROBIN AULD: I agree wholeheartedly with that. I am not  
16 here to make such findings. The threshold for me is  
17 much lower.

18 MR RIGBY: Although the threshold is lower, we submit that  
19 the Commission must come to a finding on the basis of  
20 the totality of the evidence before it, that after  
21 making extensive investigations and inquiries that there  
22 is sufficient evidence before this Commission to come to  
23 a conclusion or to arrive at a conclusion, we so invite  
24 the Commission to do so, that the payment of the  
25 \$500,000 on 9th January 2007 and all of the other

1 payments, the other five payments made to Mr Misick  
2 through his firm were not in any way bribes or corrupt  
3 payments or amounted to payments in respect of any  
4 serious dishonesty.

5 SIR ROBIN AULD: You say I have jurisdiction to find  
6 a negative but not a positive, and when I am looking at  
7 the negative, not to consider possibilities? Is  
8 that what you are saying?

9 MR RIGBY: No, you must look at the possibilities, but  
10 the possibilities must be judged in the context of  
11 the Inquiry and the investigation and the information  
12 which -- or the evidence gathered.

13 SIR ROBIN AULD: Those are blinding glimpses of the obvious.  
14 That is the judicial or a judicial task for every  
15 exercise of this sort. You take everything into account  
16 and give it such weight as you think it deserves.

17 (4.00 pm)

18 MR RIGBY: In looking at the totality of the evidence,  
19 the testimonies, the letter of Dr Kinay of  
20 30th January 2009, the chronology of the events which in  
21 the context of the Joe Grant's Cay development, that it  
22 leads to a reasonable conclusion that the payment on  
23 9th January was simply a political donation.

24 SIR ROBIN AULD: But a reasonable conclusion may be  
25 a reasonable one, it may not be the right one and there

1 may be other possibilities. That is the problem you  
2 have and I have to grapple with. But I think we have  
3 probably exhausted this particular dialogue and you  
4 ought to move on to your fourth point.

5 MR RIGBY: I just wish to say before I move on that we would  
6 submit that the totality of the evidence minimises these  
7 wide possibilities.

8 SIR ROBIN AULD: I understand your submission.

9 MR RIGBY: And limit it to but one.

10 SIR ROBIN AULD: Only one possibility, negative.

11 MR RIGBY: Only one possibility.

12 There was not much -- my fourth point is the loans  
13 made by Mr Misick to the Premier, and I believe during  
14 the course of Mr Misick's testimony, he made it very  
15 clear that he was not too concerned about the repayments  
16 of the loan because he is -- he will soon perhaps deduct  
17 the loan payments from his monthly rental payable on the  
18 Windsor Place plaza where he houses his law firm.

19 That is around -- his evidence is on  
20 27th January 2009 in this respect.

21 On the final point, the final point is the issue of  
22 Oceanic Development Limited; and the question as to  
23 whether the undated declaration of trust in respect of  
24 the three nephews, Alwood Gardiner, I think it is  
25 Clifton Black and Albright Gardiner, whether that was



1 the correct declaration or whether it was  
2 the declaration dated 16th November 2006 in favour of  
3 Mr Don Gardiner.

4 I think the transcripts confirm that  
5 the Attorney General's office had undertaken to provide  
6 the Commission with the appropriate declaration. I have  
7 not been given confirmation of that but I assume that it  
8 is the declaration in respect of Mr Don Gardiner.

9 SIR ROBIN AULD: I don't know whether Mrs Duff is able to  
10 help on that. We are not burdened by the presence of  
11 any representative from the Attorney General's chambers  
12 this afternoon, so it can't be answered at the moment  
13 but you should have an answer if you don't know what has  
14 happened.

15 MR RIGBY: Much obliged.

16 SIR ROBIN AULD: I will see, when we look at the transcript,  
17 if we can pick this point up and track it down.

18 MR RIGBY: I think I may be able to give a reference.

19 I think it was on 27th January 2009, around page 145,  
20 lines 14.

21 SIR ROBIN AULD: What are we looking for?

22 MR RIGBY: This is when the Attorney General's office  
23 provided an undertaking that they would confirm which  
24 declaration of trust in respect of Oceanic Development  
25 Limited had been handed to them.

1 SIR ROBIN AULD: We did have that produced, I am sure. We  
2 will check it.

3 MR RIGBY: In speaking to them, they confirmed that you had  
4 it, but they could not confirm to me which declaration  
5 it was because the person did not hand that declaration  
6 who I spoke to.

7 We raised that simply to say that Mr Chal Misick's  
8 evidence is that it was an error on his part and there  
9 was nothing untoward by it. It was a simple error and  
10 we therefore would submit that that would fall within  
11 the narrow limb with respect to his engagement as  
12 an attorney or in respect of the operations of his firm  
13 as an attorney, and therefore would fall outside of the  
14 jurisdiction --

15 SIR ROBIN AULD: It is nothing to do with jurisdiction, is  
16 it? If it was an error, truly an error, then it was not  
17 corrupt or otherwise serious dishonesty. Nothing to do  
18 with jurisdiction.

19 MR RIGBY: The final point for me is the evidence in respect  
20 of Windsor Investment Group Limited.

21 There was some dispute on the evidence with respect  
22 to that of Floyd Hall, the Deputy Premier when he  
23 appeared before the Commission again, recalled  
24 on 2nd February 2009, as to whether in fact he had been  
25 given any documents in relation to his shareholding in

1 Windsor Investment Group Limited. I think he had  
2 indicated that he had not been given any documents, but  
3 he did confirm that he invested \$40,000 for  
4 the refurbishment of the property on the land which was  
5 purchased.

6 He did not indicate that that was a loan or that was  
7 any bribe or any gift and we would simply submit --

8 SIR ROBIN AULD: Who didn't, Mr Chal Misick didn't?

9 MR RIGBY: No, Mr Floyd Hall.

10 The testimonies of the Premier and Honourable  
11 Hanchell, that of Mr Hanchell is in the transcripts of  
12 6th February 2009 at pages 94 and 95. He confirmed that  
13 he too invested into the deal, and we would say and  
14 submit that the evidence of the Premier and Honourable  
15 Hanchell both corroborates the evidence of  
16 Mr Chal Misick in respect of the underlying purpose for  
17 which the funds were advanced.

18 Just to move on to my conclusion, that is that there  
19 can be no complaint by the Commission in respect of  
20 the utilisation by Mr Misick of his client's account.

21 The evidence of the spreadsheet shows that at all times  
22 he acted within conformity of the Legal Professional  
23 Ordinance and the professional code of conduct in  
24 the manner in which he dealt with his client's account.

25 It is clear under section 21 of the Legal Professional

1 Ordinance that he holds those funds on trust for  
2 the client, repay to the client or as may be directed by  
3 the client.

4 We further submit that there was nothing improper on  
5 the part of Mr Chal Misick to render payments on behalf  
6 of the Premier, his client at the time and we would  
7 submit that that is legally authorised by virtue of  
8 section 21 of the Legal Professional Ordinance.

9 Finally, we would submit that -- I would invite  
10 the Commission to find that based on the preponderance  
11 of evidence before it, that Mr Chal Misick was  
12 co-operative; that he fully disclosed to this Commission  
13 all matters which fell within his engagement in respect  
14 of the Premier and Lisa-Raye McCoy Misick, those who had  
15 waived their privilege; and that there is no evidence  
16 before this Commission which can show that he was  
17 a conduit or a facilitator in any illegal, illicit,  
18 improper, dishonest, corrupt practice; and that he did  
19 not use his position as an attorney to facilitate any  
20 such legal, improper, dishonest or corrupt practice.

21 We invite the Commission to so find and to confirm  
22 that in respect of the payment to him of the donation on  
23 9th January 2007 of the \$500,000, that that too was not  
24 illegal, improper, dishonest or corrupt payment and that  
25 the sum -- that sum was constituted as a political

1 donation, and therefore he broke no law, breached no  
2 protocol in accepting that and the other five political  
3 donations on behalf of the Premier and/or the PNP.

4 Those are the submissions I wish to make before  
5 the Commission in respect of Mr Misick and I do  
6 undertake to provide the full length of the submissions  
7 which I was referring to.

8 SIR ROBIN AULD: Yes, you have obviously done a lot of work.

9 I can see you had a very considerable bundle there,  
10 Mr Rigby. If you are able to produce those or any other  
11 written submissions, the Commission would like them by  
12 Saturday the 21st of this month. That gives you ten  
13 days.

14 MR RIGBY: Much obliged.

15 SIR ROBIN AULD: You look as if you have got the makings of  
16 them there already.

17 MR RIGBY: Yes, I do.

18 SIR ROBIN AULD: One matter I want to ask you about; were  
19 you present this morning during Mr Fitzgerald's  
20 submission?

21 MR RIGBY: Yes.

22 SIR ROBIN AULD: You heard his submission about the problem  
23 of the need for a fair trial by a judge and jury, if  
24 that is the outcome of any recommendations made by  
25 the Commission.

1 The burden of his submission was that there has been  
2 such publicity given to matters giving rise to this  
3 Commission and in the course of it that there could not  
4 possibly be any fair trial by judge and jury in this  
5 country and that this Commission should anticipate that  
6 likely outcome if it were to go to trial, and make some  
7 sort of recommendation that would deal with it now.

8 What do you say?

9 MR RIGBY: I certainly endorse those submissions. I only  
10 wish to add that in light of the thoroughness, the work  
11 of the submission, I would be very surprised if there is  
12 any further evidence which can be garnered from any  
13 investigations to be undertaken either by the police or  
14 some other agency. It appears to me --

15 SIR ROBIN AULD: That is not the point. Even if there were,  
16 the submission would be that there has been so much  
17 prejudice from publicity that there could not be a fair  
18 trial.

19 MR RIGBY: But it arises in this context, that when one  
20 looks at the terms of reference, one assumes that  
21 the recommendation would be on the basis that there can  
22 be further evidence garnered. If there is not, coupled  
23 with that fact and the extent by which the Inquiry has  
24 been carried out and the exhaustive nature of the  
25 testimonies and being subject to cross-examination by

1 sometimes multiple attorneys, one really would expect  
2 that this Commission would have all of the evidence  
3 before it and that too would undermine --  
4 SIR ROBIN AULD: It is not the point I am putting to you.  
5 It is a wholly different point. I have put the point to  
6 you. If you feel you haven't anything to add to  
7 Mr Fitzgerald's answer, I won't pursue it.  
8 MR RIGBY: No, I am only saying that that too would add in  
9 my view to the inability of having a fair trial.  
10 SIR ROBIN AULD: Mr Rigby, thank you for your submissions,  
11 I am grateful to you for them.  
12 MR RIGBY: Thank you.  
13 Well now, Mr Ariel Misick, are you to be the last  
14 man in in a fading light today or would you like to  
15 start in the bright dawn of tomorrow?  
16 MR MISICK: I am quite happy to start today. I think it  
17 might be useful because I understand we are all under  
18 a little time pressure here, so if you want to...  
19 SIR ROBIN AULD: I think we will all have a break for five  
20 to ten minutes now and then you can make a decent start.  
21 (4.15 pm)  
22 (A short break)  
23 (4.28 pm)  
24 Closing submissions by MR MISICK  
25 SIR ROBIN AULD: Mr Misick.

1 MR MISICK: Yes. Thank you, sir. Can I first of all tell  
2 you about Mr Wilson. You had asked me yesterday to take  
3 instructions.  
4 SIR ROBIN AULD: Yes.  
5 MR MISICK: I have taken instructions and I am told by  
6 Mr Wilson that he sticks to his case that in relation to  
7 the indemnity, that was as a result of instructions from  
8 his senior partner and that is Mr Papachristou, and that  
9 Mr Papachristou was involved in the transaction.  
10 SIR ROBIN AULD: I think given what has emerged, I think we  
11 should try to avoid repeating it. We have on  
12 the transcript what Mr Melbourne Wilson said. It is  
13 hotly in dispute. We shall obtain or ask his former  
14 partners to produce the documents which they say will  
15 refute what he says, put them in evidence to  
16 the Commission and provide them to you or copies to you  
17 for you to consider as well.  
18 MR MISICK: I think that is the best -- thank you, sir.  
19 SIR ROBIN AULD: Thank you for taking instructions about  
20 that.  
21 (4.30 pm)  
22 MR MISICK: Can I also before I start off tell you how  
23 I propose to deal with my submissions. I have three  
24 clients.  
25 SIR ROBIN AULD: I have seen two submissions, one from you



1 on behalf of Mr Hanchell, and one on behalf of Mr Hall.

2 MR MISICK: Yes. What I propose to do, I provided you with

3 full submissions on behalf of Mr Hanchell and I propose

4 to go through at least part of that with you today. In

5 relation to Mr Jeffrey Hall, I have provided written

6 submissions on what I consider to be the main point,

7 that is in relation to the matter of

8 Urban Development Limited, and I will take up the offer

9 to supplement these submissions by further ones within

10 the next ten days.

11 SIR ROBIN AULD: Thank you.

12 MR MISICK: In relation to Mr Wilson, I have not been able

13 to prepare any written submissions, and I propose to

14 make written submissions to you on his behalf as well.

15 SIR ROBIN AULD: But no oral submissions.

16 MR MISICK: Not at this time, no, sir.

17 SIR ROBIN AULD: I understand. Thank you very much. Thank

18 you very much for all that you have done in putting

19 together what looked to be fairly substantial written

20 submissions for Mr Hanchell and Mr Hall.

21 MR MISICK: Thank you, sir.

22 SIR ROBIN AULD: So today you are starting on Mr Hanchell.

23 MR MISICK: Mr Hanchell, yes.

24 As you know, sir, there are two main areas that you

25 are concerned with. The first is whether or not there

1 is information as to corruption and dishonesty in  
2 connection with past and present members of the House of  
3 Assembly and in that connection whether or not you  
4 should make recommendations as to the instigation of  
5 criminal proceedings. That is the thrust of the  
6 submissions I will be making today.

7 I intend to invite Mr Hanchell, in the light of the  
8 testimony that has taken place over the last month or  
9 so, to ask him whether or not he wishes to make any  
10 suggestions or recommendations to you on the second part  
11 of your work, which is the legislation and  
12 administrative recommendations to stem any systemic  
13 weaknesses in the system.

14 SIR ROBIN AULD: I am grateful to you for that and I will  
15 welcome any help that you can give me.

16 MR MISICK: Sir, I have suggested that he may want to do  
17 that and I will follow through up on that.

18 SIR ROBIN AULD: Will it be possible for him to make his  
19 written submissions on that within the ten-day period  
20 I have indicated?

21 MR MISICK: That is the intention, sir.

22 The starting point, given the terms of reference is  
23 the legal framework as it relates to corruption and  
24 dishonesty, and you will see in my written submissions  
25 I have tried to identify the relevant statutory and

1 common law provisions. In relation to corruption,  
2 the statutory provisions are the Legislative Council,  
3 Powers and Privileges Ordinance 1998 and then there is  
4 the Elections Ordinance 1998.

5 The first provision deals with corruption in  
6 relation to members of the House of Assembly, and it is  
7 section 82 and 83 of that ordinance which basically  
8 provides that it is an offence for any member of the  
9 legislature to accept or agree to accept or attempt to  
10 obtain for himself or any other person any bribe, fee,  
11 compensation, reward or benefit of any kind for  
12 speaking, voting or acting as such a member in  
13 proceedings before the House of Assembly, or for  
14 absenting himself from such proceedings or from  
15 refraining from speaking or voting. That is  
16 section 18(2). Under section 18(3):

17 "It is an offence for any member to bring forward,  
18 promote or advocate in the House of Assembly any  
19 proceedings or measure in which he may have acted or  
20 been concerned in consideration for a pecuniary fee or  
21 reward."

22 I raise that just to dismiss it because I would  
23 submit that there is no evidence to suggest that any  
24 offence under those sections may have been committed and  
25 the reason is that that section is only engaged in

1 connection with proceedings before the House of  
2 Assembly.

3 The next provision -- you have heard about this from  
4 other counsel -- is the Elections Ordinance and in  
5 particular section 68, which relates to bribery, and  
6 section 69, which relates to treaty. I have set out in  
7 paragraph 2.5 of my submissions the law on that. I do  
8 not propose to go through all of them. Suffice it to  
9 say that the essential ingredient of the offence of  
10 bribery in relation to elections is that it must be to  
11 seek to influence a person to vote or to persuade them  
12 from not voting by offering some kind of reward.

13 That reward may be either by way of gift, loan,  
14 offers of employment or to compensate -- and it is also  
15 an offence to compensate a voter as a consequence of  
16 a voter having voted or refrained from voting.

17 Section 69 is very much the same, except this one  
18 relates to treating a person by way of food, drink and  
19 entertainment in order to induce them to vote or to  
20 compensate them from having voted or refrain from  
21 voting.

22 Those are the two statutory provisions that relate  
23 to corruption. At common law, there is the common law  
24 offence of bribery and that offence is committed by any  
25 public officer if he receives a bribe to act contrary to

1 his duty or to show favour in the discharge of his

2 duties.

3 The public officer is wide enough to cover

4 ministers.

5 SIR ROBIN AULD: I was not paying attention to the provision

6 there.

7 MR MISICK: It is the common law, paragraph 2.2 of the

8 submission.

9 SIR ROBIN AULD: You have gone back, yes.

10 MR MISICK: Yes, I think it is --

11 SIR ROBIN AULD: There is nothing in the Crimes Ordinance,

12 is there?

13 MR MISICK: Not that I have been able to discern. I will

14 certainly have another look at that.

15 SIR ROBIN AULD: Thank you.

16 MR MISICK: Then in relation to dishonesty, there are three

17 offences which may be relevant for consideration. They

18 are all offences under the Theft Ordinance. These are

19 the offences which will be well known to you because

20 the regime is very similar to that which exists in

21 the UK.

22 It is obtaining property by deception, obtaining

23 a pecuniary advantage by deception and evasion of

24 a liability by deception.

25 SIR ROBIN AULD: Good old friends, those.

1 MR MISICK: Yes. In addition there is one common law  
2 offence which we should look at if only to dismiss it.  
3 That is the offence of -- the common law offence of  
4 cheating the Revenue.

5 The reason why we should look at that is because  
6 that is the one of the old common law offences in  
7 relation to dishonesty which has been preserved under  
8 the Theft Ordinance. I have brought a copy of the  
9 relevant provision if you would like to see it.

10 SIR ROBIN AULD: Yes, I would. Where is this?

11 MR MISICK: This is in the Theft Ordinance.

12 SIR ROBIN AULD: You have no -- Theft Ordinance section?

13 MR MISICK: It is the saving provision in section 36.

14 This is the one that deals with cheating the  
15 Revenue. It says:

16 "The following offences are hereby abolished ...  
17 common law of larceny, robbery, burglary, receiving  
18 stolen property, obtaining property by stress, extortion  
19 [so on and so forth] ... and except regards offences  
20 relating to public revenue cheating."

21 I believe that provision has also been -- it  
22 certainly was at one stage preserved in relation to --  
23 under the Theft Act in the UK.

24 SIR ROBIN AULD: There is no discrete offence here as such  
25 as they have in Scotland of fraudulent conduct or simply

1 fraud? You have not got a fraud provision?

2 MR MISICK: No, sir.

3 SIR ROBIN AULD: It is an emerging development in some of

4 the common law jurisdictions and there has long been

5 an argument in favour of it in England and Wales. So

6 that is it, is it?

7 MR MISICK: That is it, as far as I can tell. I will have

8 another look but from what I can tell those are

9 the provisions.

10 SIR ROBIN AULD: I suppose there will still be a common law

11 offence of conspiracy to defraud?

12 MR MISICK: Certainly there is conspiracy to defraud as well

13 as the common law offence of aiding and abetting.

14 SIR ROBIN AULD: Yes. Joint venture really.

15 MR MISICK: Yes.

16 In relation to Mr Hanchell, I just --

17 SIR ROBIN AULD: I should ask you one more question. This

18 may be far, far away from anything I have to consider

19 here; in the Companies Ordinance, is there a provision

20 for fraudulent trading?

21 MR MISICK: There is.

22 SIR ROBIN AULD: Being knowingly concerned in

23 the fraudulent --

24 MR MISICK: There is provision for fraudulent trading. I am

25 not certain whether it is -- I am not sure about

1 the criminal offences component of it but there is  
2 certainly provision to allow the setting aside of  
3 fraudulent transactions.

4 SIR ROBIN AULD: Yes, I should think there must be, if it is  
5 anything like the English legislation which is quite  
6 longstanding on this; the companies feel that an offence  
7 of trading with intent to defraud creditors, usually of  
8 a company which is only in liquidation by the time  
9 the proceedings are contemplated.

10 MR MISICK: Yes, I think in our case it is -- the provision  
11 is that you have to be -- the transaction must have  
12 taken place three months or less before the company is  
13 put into liquidation. But I will check the Companies  
14 Ordinance to see if there were any other criminal  
15 offences which may be applicable.

16 SIR ROBIN AULD: That is the menu?

17 MR MISICK: Yes.

18 So in relation to Mr Hanchell, just so that we can  
19 dismiss the question of cheating the Revenue because  
20 this arose in one -- there is just one possible  
21 reference to that. A letter was sent by the Commission  
22 on his behalf or, sorry, in respect of him on  
23 10th December 2008, ascertaining -- to ascertain whether  
24 or not he had paid all of the duty, the fuel duty on  
25 the importation of fuel by Caicos Oil Limited, and for



1 example if he had not done so, that could conceivably  
2 fall under either the common law offence of cheating the  
3 Revenue or of evading liability.

4 You will see in paragraph 2.14, I deal with that.  
5 Just to confirm that -- the collective Customs has  
6 confirmed that all fuel imported by Caicos Oil, that  
7 duty has been paid, and so it will be my submission that  
8 there could be no suggestion that he evaded any  
9 liability.

10 (4.45 pm)

11 SIR ROBIN AULD: You say there is evidence to that effect?

12 MR MISICK: Yes. It is bundle 4, tab 17.

13 The next area in relation to Mr Hanchell that he was  
14 questioned about is his declaration of interest. I deal  
15 with that in paragraph 3.1 and 3.2 of my submissions.

16 Mr Hanchell accepts at once that his declarations  
17 were not adequate or complete and that he failed to  
18 devote the time and effort that was required to ensure  
19 that his declarations were complete and accurate.

20 I go on to say that what he does dispute is that any  
21 inaccuracy or inadequacy was a result of any deliberate  
22 intention to deceive either the Registrar or members of  
23 the public as to the identity or extent of any of his  
24 assets, or whether there was any conflict of interest  
25 which he was attempting to cover up.

1 So it is this, I submit, and I am sure you had  
2 the same submissions from everyone else today, is that  
3 the failure was not deliberate. I know it is a matter  
4 that you will have to consider when writing your report  
5 and of course Mr Hanchell expects to be criticised in  
6 respect of it.

7 But insofar as the failure is indicative of any  
8 corrupt or dishonest intention, I have set out in  
9 paragraphs 3.3 all the way down to paragraphs 3.19  
10 the various reasons why in my submission the failure  
11 should not be regarded or you should not come to the  
12 conclusion that that failure was an indication of  
13 corruption or dishonesty.

14 SIR ROBIN AULD: Yes. The whole thrust of the Registration  
15 of Interest Ordinance, as you point out here, is to  
16 focus the Member of the House's attention on his duty to  
17 the House.

18 MR MISICK: Yes.

19 SIR ROBIN AULD: And if insofar as some of them are also  
20 ministers, well, they have to obviously observe that  
21 obligation, but it is not really directed at their duty  
22 as ministers or any other public officer's duty, in  
23 the more general responsibility they have to the public  
24 interest. That, I suppose, will now be remedied by  
25 the Integrity Commission Ordinance when it comes into

1 force with its much wider provisions.

2 MR MISICK: It is much wider and has more teeth. Certainly

3 I think its timing is ripe.

4 SIR ROBIN AULD: There are two provisions which have lain

5 undisturbed throughout the oral hearings which I only

6 came upon recently in the constitution, sections 47 and

7 48, which seemed to have a parallel obligation, slightly

8 more rigorous than that in

9 the Registration of Interests Ordinance. But anyway

10 I have your point. The thrust of this is towards

11 the Member's duty towards the House and his fellow

12 Members.

13 MR MISICK: I don't propose to go through all of those.

14 The one matter which I know did -- was raised during

15 the hearings was the question of Caicos Oil. I deal

16 with that at paragraph 3.7 and this is the proposal for

17 the bulk storage, petroleum facility.

18 You raised, sir, the question of whether or not,

19 when the proposal came before Cabinet, whether or not

20 Cabinet should have put it out for tender, and what

21 I say in paragraph 3.7 is that that was certainly one

22 suggestion which Cabinet might have taken up.

23 The other, and I say that is still possible, is that --

24 sorry, this is at paragraph 3.8. Not 3.7.

25 An alternative would have been for TCIG to seek expert

1 advice on the proposal with a view to negotiating  
2 the best possible terms in the public interest, if it is  
3 still possible to do that, since all that Caicos Oil has  
4 received to date is approval in principle.

5 So because it is such an important facility and it  
6 has broad public sector implications, rather than as  
7 often happened, where Cabinet makes decisions on  
8 important issues without proper advice and guidance, on  
9 an issue like this, it would seem this would be one of  
10 those matters, this would cry out for expert advice, in  
11 terms of Cabinet's negotiating abilities to come up with  
12 the best terms.

13 The other matter I want to refer you to is  
14 paragraph 3.4, which deals with Palm Breeze Limited.

15 You would recall, this is the company in which  
16 Mr Hanchell was issued a lease in the name of a company  
17 called Palm Breeze Limited. He effectively wrote  
18 a letter to his company signed by himself.

19 He signed the letter as a minister, and he was doing  
20 this pursuant to an authority that was granted to him by  
21 Cabinet, whereby the minister was able to grant tracts  
22 of land not exceeding 10 acres without reference to  
23 Cabinet, and he did this to himself.

24 What I have said there is that this clearly was  
25 a case where -- and he accepts, and I believe he may

1 have said this in his evidence before you, he accepts  
2 that in a case like this, he should have referred  
3 the matter for Cabinet's decision rather than making  
4 a decision in favour of himself.

5 That is at paragraph 3.14. Before I leave there,  
6 one observation I wish to make and this perhaps may  
7 relate to the second limb of your terms of reference, is  
8 that it appears that there is no -- that in relation to  
9 this authority, which has been conferred on  
10 the minister, that there apparently is no follow-up  
11 provisions, there is no follow-up procedure whereby  
12 the decisions made by the minister are either reviewed  
13 by the Cabinet or that Cabinet is in fact actually  
14 informed on any periodic basis of the decisions that  
15 the minister has made pursuant to this authority.

16 Of course this goes to the crucial question of  
17 accountability in the discharge of that authority.

18 On the question of political donations, I don't  
19 think I can add more than I have said in paragraph 3.15.

20 I will bring to your attention, since this is  
21 obviously a matter of some considerable interest,  
22 paragraph 3.17 where I deal with his liabilities and of  
23 course there is the \$1 million loan that he obtained  
24 from the Premier, which was only disclosed to  
25 the Commission for the first time, I believe,

1 the morning that he was giving his written -- his  
2 testimony. I think at the same time there was the loan  
3 from Saunders & Co.  
4 (5.00 pm)

5 In relation to the Saunders loan, this was properly  
6 documented, secured by a caution and was an unregistered  
7 charge. He is under a legal obligation to repay  
8 the loan, and it was for a specific purpose, that is to  
9 acquire the condominium in Regent Grand as you may  
10 recall. I would invite you not to make any adverse  
11 conclusion on the drawdown of this loan from  
12 Saunders & Co. In relation to the loan from  
13 the Premier, it was a large loan to obtain from one of  
14 his ministerial colleagues who was himself borrowing  
15 money. I am not sure I can take it any further than  
16 that.

17 SIR ROBIN AULD: It is very helpful in the way you have set  
18 it out, thank you.

19 MR MISICK: In relation to the next item under the  
20 submissions, I deal with the disclosures to the  
21 Commission.

22 Mr Hanchell accepts and I accept that there were  
23 numerous errors and contradictions in some of the  
24 material initially submitted to the Commission.

25 I hope you will accept that these were never

1 intended to mislead the Commission or to make it more  
2 difficult for the Commission to carry out its work. In  
3 particular, I know we had the exchange earlier on as to  
4 the interpretation of the Register of Interests as to  
5 the composite. To the extent that there was any  
6 misinterpretation of that, I take responsibility for  
7 that and I would ask you not to visit that on  
8 Mr Hanchell.

9 Then there was the American Express card and  
10 the Horizon Mastercard which were also not disclosed  
11 until very late in the day. I pointed out that in  
12 relation to the Horizon Mastercard there was absolutely  
13 nothing extraordinary at all in those credit card  
14 statements and there was certainly no reason why he  
15 should not have disclosed them. I hope you will bear  
16 that in mind when you come to consider  
17 the non-disclosure in relation to both that card and  
18 the American Express card.

19 As to Mr Hanchell's sources of income, which I deal  
20 with in section 5, I would submit that there is now  
21 before the Commission, however late it came in the day,  
22 a full disclosure of all of Mr Hanchell's sources of  
23 income, and principally they are monies derived from his  
24 salary and allowances as a government minister. He has  
25 two operating companies which are quite profitable, Al

1 Services Limited and Caicos Oil. He has received some  
2 political donations and I will deal with one of them in  
3 particular. Of course there are the loans that we have  
4 already mentioned both from financial institutions,  
5 Saunders & Co, and the Premier.

6 At paragraph 5.5 I deal with a particular series of  
7 loans totalling -- I think the number there may be  
8 actually, I think it should be 360,000 instead of  
9 300,000 -- that Mr Hanchell received from  
10 Mr Arlington Musgrove, leading up to the 2006 and 2007  
11 elections.

12 This of course is a large sum of money from a single  
13 candidate in a short period of time. The explanation  
14 that Mr Hanchell has offered, and I will ask you to  
15 accept, is that Mr Arlington Musgrove is not only  
16 a strong and ardent supporter of his party but he is  
17 also his friend. I will invite you to take into account  
18 the fact that the \$300,000 was placed in an account  
19 established by Mr Hanchell especially for political  
20 purposes, so that it was not spent on himself.

21 The contributions were paid between November and  
22 January -- November 2006 and January 2007 and these were  
23 the three months immediately preceding the elections.  
24 In November 26, I think that was -- that is  
25 December 2006 -- I am told it is November, there was



1 a PNP party convention in Grand Turk over a period of

2 four days. You heard his evidence about that yesterday.

3 SIR ROBIN AULD: Remind me if there was evidence about

4 the companies, the major companies in which Mr Musgrove

5 was interested?

6 MR MISICK: Yes, there were two. There was a company called

7 JACA Limited and then he had another company called

8 Caicos Construction.

9 SIR ROBIN AULD: That is right.

10 MR MISICK: I believe there was testimony that

11 Caicos Construction had a contract to carry out road

12 works on behalf of TCIG, in 2004. That contract was

13 completed in 2005.

14 In one of the bundles I noticed this morning, I

15 think there was some documentation regarding a company

16 called Herzog and JACA was a subcontractor to Herzog.

17 Herzog is the company that carried out most of the road

18 works or has carried out most of the road works on

19 Providenciales in the last two years or so.

20 The contract was with Herzog and TCIG, not JACA and

21 TCIG. So I think in terms of the legal regime,

22 obviously there are two issues which arise in relation

23 to this payment; one was whether it was a corrupt

24 payment in respect of the award of any contracts which

25 Mr Musgrove directly or indirectly benefited from and

1 then -- because there was the -- because the payments  
2 were made in or around election time, the question was  
3 whether or not any of this money was destined to induce  
4 voters to vote. I would suggest certainly in relation  
5 to the letter, it would be straining -- there would be  
6 a strain on the evidence to come to any such, even  
7 a preliminary conclusion. There was no evidence that  
8 any particular voters were sought to be influenced by  
9 any of these funds.

10 In relation to his contribution of \$90,000 that he  
11 received from the PNP over the four years between 2004  
12 and 2008, I have simply said that these amounts in  
13 the context of -- these sums of money that you have  
14 heard, that have taken place in relation to campaigns in  
15 this jurisdiction, are not in any sense excessive and  
16 should not give rise to any suspicion.

17 In section 6 of the submissions I deal with the  
18 issue of the American Express Centurion card, which was  
19 disclosed recently.

20 I raise this because obviously it was Mr Hoffman who  
21 introduced Mr Hanchell to J&T Banka. I am aware that  
22 you are looking into the question of the relationship  
23 between Mr Hoffman and the Premier and J&T Banka and  
24 the fact that Mr -- that the Premier also had one of  
25 these cards which was -- and he was introduced to

1 the bank via Mr Hoffman.

2 So the question is whether or not there is any link  
3 between that and Mr Hanchell.

4 My submission is while it may look suspicious, and  
5 I would not argue otherwise, the card was clearly not  
6 a gift to Mr Hanchell because he was required to pay  
7 the yearly fee. He was billed for the use of the card  
8 and when he was unable to pay, he was denied use of the  
9 card.

10 In 6.3 I point out the fact that the card was issued  
11 by a bank in Prague and not one in TCI and North America  
12 is -- no institution has offered Mr Hanchell such a card  
13 and I am sure had they offered him one, he probably  
14 would have taken it up.

15 The next item I deal with is the allocation of Crown  
16 land. This of course is an area in which Mr Hanchell  
17 has to accept responsibility because he was the minister  
18 of land.

19 Much of the movement in Crown land took place under  
20 his watch. I think he has accepted that and he does  
21 accept that, at paragraph 7.2, the whole system for  
22 Crown land allocation and disposition is in need of  
23 reform.

24 He has also conceded that himself and other  
25 ministers have played a direct role in the process of

1 distribution.

2 It is clearly not appropriate for ministers to be  
3 involved at that level and they really ought to confine  
4 themselves to making policy.

5 SIR ROBIN AULD: That is your submission or Mr Hanchell's  
6 own stance?

7 MR MISICK: The last words are my submission, but certainly  
8 his stance is that he accepts that the policy is -- that  
9 the system is in need of reform and he accepts that in  
10 an ideal world, ministers ought not to be involved in  
11 the allocation and distribution.

12 He seeks to explain it by the fact that there is  
13 a tremendous demand on himself, his Cabinet colleagues  
14 and other elected Members to get involved in the process  
15 in that Members are effectively used as messengers  
16 between applicants and the Permanent Secretary and  
17 others who are involved in the administration of Crown  
18 land.

19 I think he would accept that neither himself nor any  
20 of his other ministerial colleagues have done a great  
21 deal in the last two years at any rate to prevent  
22 themselves being used as messengers.

23 SIR ROBIN AULD: As messengers?

24 MR MISICK: As messengers, yes. Of course ministers are not  
25 ordinary messengers. What Mr Hanchell does say is that

1 he has never received or asked for any kind of financial  
2 reward for his involvement in this process, and his  
3 involvement has not been out of any desire to be corrupt  
4 or dishonest.

5 I don't think he would deny, and I think he actually  
6 said so yesterday, that the system as it operates leads  
7 or may lead to favouritism. I think those were his  
8 words.

9 SIR ROBIN AULD: The paper trail?

10 MR MISICK: No, he said the system as it operates now may  
11 lead to favouritism in the allocation.

12 (5.15 pm)

13 So while he expects that he will receive criticisms  
14 for the way the allocation and distribution has been  
15 managed, and while the system itself may lead to  
16 favouritism, I would submit that that is not sufficient  
17 to warrant an investigation as to whether any corrupt or  
18 dishonest activities has occurred in relation to him.

19 I can't leave this subject without mentioning the topic  
20 of Gary Lightbourne.

21 Mr Lightbourne was an example of a case where land  
22 was allocated, in fact two pieces of land were allocated  
23 to him, one on West Caicos and one on Providenciales  
24 without his, he says, without him making  
25 the application.

1 SIR ROBIN AULD: Did you say South Caicos?

2 MR MISICK: No, West Caicos.

3 The significance of this is that, if you would  
4 recall one of the complaints that was put before the FAC  
5 was that I think the opposition was suspicious of the  
6 allocation of land at or around election time being made  
7 to persons, and I believe this is as close as it gets to  
8 that allegation.

9 What Mr Hanchell says in his defence in relation to  
10 that is that he signed the two letters that you heard of  
11 that were given to Mr Lightbourne; there is no dispute  
12 that he signed those letters. And in the case of the  
13 West Caicos property, it was on the list that came from  
14 him. But that list he said was composed of names based  
15 on applications received by the department, applications  
16 delivered directly to him and oral representations made  
17 to him. And the list was a work in progress.

18 There is also evidence, as you may recall, that  
19 Mr Lightbourne had had a history of making applications  
20 for Crown land and was often dissatisfied of the offers  
21 that were given to him.

22 What I will say on behalf of Mr Hanchell is that he  
23 never delivered those letters personally, there was no  
24 conversation between -- ever any conversation between  
25 him and Mr Lightbourne to suggest that there was any

1 bargain or offer of any bargain between him and

2 Mr Lightbourne.

3 It would be far-fetched in my submission on  
4 the basis of that document and Mr Lightbourne's evidence  
5 to launch an investigation as to corrupt or dishonest  
6 practice, dishonest activity by Mr Hanchell.

7 We are nearly there. There are two matters. One is  
8 the Salt Cay dock. Mr Hanchell's role in this, I am not  
9 going to read through my skeleton, but Mr Hanchell's  
10 role in this is that he called a meeting of 9th January  
11 2009 which was held at the Premier's office to consider  
12 the matter of what was taking place in relation to  
13 the government dock at Salt Cay.

14 Mr Earl Handfield who was the then Chairman of the  
15 physical planning board has suggested both in written  
16 documents as well as to the Commission in his oral  
17 evidence that this was an example or one of two examples  
18 in which he was being pressured to call a meeting by  
19 ministers to assist developers.

20 Yes, the meeting did take place and there was  
21 a concern expressed both by Mr Hanchell as well as  
22 the Premier who was at the meeting as to why  
23 a government dock -- why an application for  
24 the construction of a government dock had been refused.

25 The important point is that the Director of Planning

1 gave evidence that while there was a heated debate and  
2 a heated discussion, is that there was no pressure put  
3 on him to call a meeting and in fact he was never  
4 instructed to call a meeting of the physical planning  
5 board.

6 Further, there was never any contact between  
7 Mr Hanchell and Mr Handfield on that or any other day  
8 because Mr Handfield did not respond to the text  
9 messages, he did not attend the meeting and there was --  
10 there were no phone calls between Mr Hanchell and  
11 himself.

12 Now, the other important point I would suggest, sir,  
13 is that and while it is the manner in which the meeting  
14 was called, and I say nothing about the heated nature of  
15 the debate, the purpose of the meeting was to explain,  
16 and this is demonstrated both from the evidence as well  
17 as from the notes of Mr Robinson which was put in toward  
18 the end, was to explain that the dock was not -- was  
19 a government dock and not part of the development for  
20 the Salt Cay Development Company.

21 This was not a case where certainly Mr Hanchell, if  
22 I can use the expression, was leaning on anyone in  
23 the Department of Planning or the physical planning  
24 board to advance the interest of  
25 Salt Cay Development Company.



1 Salt Cay Development Company was linked to the  
2 transaction because they had the responsibility for  
3 building the dock but the dock was a government dock and  
4 it had been budgeted for many years.

5 The one matter I would say in fairness to  
6 Mr Hanchell and other government ministers who might  
7 have been interested in the dock was that this  
8 application, when made, was considered, the Director of  
9 Planning made a very detailed analysis and  
10 recommendation but he never shared those  
11 recommendations.

12 SIR ROBIN AULD: I think he took issue over that, didn't he?

13 It was put to him, I know, this. I was not quite sure  
14 what the outcome of it all was. He maintained copies of  
15 his report had been circulated at previous meetings and  
16 so forth.

17 MR MISICK: At the meeting but he never had a meeting with  
18 anyone in government.

19 SIR ROBIN AULD: I see, in the preparation of them you mean?

20 MR MISICK: No, to suggest that he was minded to make  
21 the recommendations before he made them.

22 SIR ROBIN AULD: I see. This is all a bit of a storm in  
23 a teacup in a way. Clearly it attracted a lot of  
24 publicity when it occurred. It assumes an importance  
25 because it is capable, I suppose, of being part of

1 a strand of the relationship which some say existed  
2 between ministers and their senior civil servants in  
3 relation to the allocation and distribution of land; if  
4 ministers wanted to do something, they didn't hesitate  
5 to go about it in whatever way was open to them. In  
6 a way you have conceded part of that picture a little  
7 earlier in your submissions, that it is better that they  
8 are not involved to the extent that they have been.

9 MR MISICK: Yes. I think that it is not only in relation to  
10 land but also in relation to --

11 SIR ROBIN AULD: Planning --

12 MR MISICK: The conduct of government business generally.

13 Yes, while I think that is an issue which is worthy  
14 of comment, in my submission it is a wholly different  
15 matter to suggest that it amounts to corruption or  
16 dishonesty on behalf of Mr Hanchell.

17 (5.30 pm)

18 Finally I deal with the question of Joe Grant's Cay.  
19 I will leave you to read that. I will direct your  
20 attention to paragraph 9.5. I think this is an area  
21 where there is certainly considerable room for honest  
22 persons or honest parties to disagree. I say it is  
23 admitted that Mr Hanchell and Cabinet's  
24 responsibility -- we should start at 9.4. It was  
25 suggested to Mr Hanchell that as a trustee of Crown

1 land, he should not have taken the valuation offered by  
2 BCQS when there was a higher valuation by Mr Hoza,  
3 the government's land valuation officer. It is  
4 submitted that Mr Hanchell and Cabinet's responsibility  
5 was to get the best price obtainable at the time of the  
6 sale.

7 With due respect to Mr Hoza, there was never any  
8 real prospect of TCIG obtaining the price suggested by  
9 Mr Hoza. A cursory research will show that no developer  
10 in the history of the TCI has ever paid anything  
11 remotely like the price being suggested by Mr Hoza for  
12 an undeveloped island like Joe Grant's Cay.

13 SIR ROBIN AULD: When you say cursory research, how could I,  
14 for example, do the cursory research?

15 MR MISICK: Sir, I think if you would ask for copies of the  
16 land transfers which would include the price.

17 SIR ROBIN AULD: You mean all the land transfers ever for  
18 the last two or three years or something like that?

19 MR MISICK: Not all of them. Let's say, for example, if you  
20 take Ambergris Cay, and if you take -- I think  
21 Parrot Cay is perhaps a little older because that has  
22 been going on for a while, but if you take Dellis Cay,  
23 that was a private transaction for vacant land,  
24 undeveloped land between two private individuals.

25 SIR ROBIN AULD: So we are looking for land transfers for

1 similar properties, of similar quality?

2 MR MISICK: Remote, undeveloped properties.

3 SIR ROBIN AULD: You say cursory research, you sound as if

4 you have done it, Mr Misick, or somebody has done it.

5 MR MISICK: Only because I actually happen to know and

6 I will -- if you would like, I could certainly -- if you

7 think you need my assistance --

8 SIR ROBIN AULD: No, it is just you use -- cursory research

9 is a very attractive word to me because it means I could

10 do it quickly and if you have done it, but I suspect it

11 is because you have been here for so long and you know

12 what is going on.

13 MR MISICK: Yes. If your efforts come across a brick wall

14 and I can help, I certainly would offer to do that.

15 SIR ROBIN AULD: Thank you. You say -- I should have looked

16 over the page, shouldn't I.

17 "The Commission is invited to obtain documents and

18 records relating to Parrot Cay, Dellis Cay, Ambergris

19 Cay and East Caicos."

20 MR MISICK: It is my belief and certainly my submission that

21 the price that Mr Hoza was proposing, the transaction

22 would never have taken place and that is a policy

23 decision but that is another matter.

24 SIR ROBIN AULD: It was such a stark divide between them.

25 What was it about? I have forgotten now. Was it 11 or

1 8 million against something like 90 million?

2 MR MISICK: 7 against 90 million.

3 SIR ROBIN AULD: It is an enormous gap between the two  
4 figures.

5 MR MISICK: Absolutely, yes.

6 Finally, on personal financial connections, again  
7 I mentioned the Caicos Oil supply of vehicles to TCIG,  
8 so you can look at that and discount it, I would  
9 suggest.

10 Then of course there is the question of Mr Musgrove  
11 again and his contributions to Mr Hanchell's campaign  
12 and for the reason I have already suggested, that should  
13 not be the subject of any criminal investigation.

14 Finally, I suggest that while Mr Hanchell expects to  
15 be criticised, both personally and collectively for  
16 the way his department has been managed and the Cabinet  
17 decisions have been taken, that is a different matter  
18 from finding that there is credible information to  
19 justify launching a criminal probe.

20 Those are my submissions on Mr Hanchell, unless  
21 I can help you further.

22 SIR ROBIN AULD: That is very helpful to have that talk  
23 through your written submissions which are going to be  
24 very useful. I am grateful to you for that.

25 Then tomorrow you will go through somewhat briefer

1 submissions on behalf of the Honourable Jeffrey Hall.

2 MR MISICK: Yes.

3 SIR ROBIN AULD: And then written submissions later for

4 Mr Melbourne Wilson.

5 MR MISICK: Yes.

6 SIR ROBIN AULD: Thank you. Thank you very much indeed.

7 10.30 tomorrow.

8 (5.35 pm)

9 (The court adjourned until 10.30 am

10 on Wednesday, 11th February 2009)

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